

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

STATE OF ARIZONA,)	2 CA-CR 2014-0200
)	No. CR20132921-001
Plaintiff,)	
)	
vs.)	
)	
THOMAS YATES,)	
)	
Defendant.)	
_____)	

BEFORE THE HONORABLE HOWARD FELL
Judge of the Superior Court
Division SR

OFFICIAL REPORTER'S TRANSCRIPT
JURY TRIAL - DAY 2

April 23, 2014

Tucson, Arizona

Reported by Nichole Forrest, CSR, CRR, RMR
Certified Reporter No. 50862

APPEARANCES

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For the Defendant:
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PROCEEDINGS

THE BAILIFF: Jury entering.

(The jury entered the courtroom.)

THE COURT: Sit down, everybody. We're back on the record. 20132921. Mr. Yates is present, counsel, all the jurors.

Wasn't my fault. I said a quarter after 10:00. Because of whatever was happening over at the federal courthouse, we got delayed. And then I had a number of defendants that were in custody, and the sheriff's department was a little delayed in bringing them up because of whatever was going on over there. So we're ready to go now.

So you ready?

MS. LEE: Yes, Your Honor. State calls Stephen Sumner to the stand.

STEPHEN SUMNER

The witness, after being sworn, testified as follows:

DIRECT EXAMINATION

BY MS. LEE:

Q. Good morning. Stephen, can you please introduce yourself to the jury.

A. My name is Stephen Sumner. I was Meagan's fiancée.

Q. Can you pull that mic a little bit closer to your

1 mouth so that we can all hear you.

2 THE COURT: And down too.

3 THE WITNESS: Is that better?

4 BY MS. LEE:

5 Q. Yes. And try to speak up if you can.

6 A. Yes, ma'am.

7 Q. Stephen, how old are you?

8 A. I'm 29.

9 Q. And you earlier just a few seconds ago said that
10 you used to be Meagan's fiance, boyfriend?

11 A. Yes, ma'am.

12 Q. And do you have a son in common?

13 A. Yes, ma'am.

14 Q. Meagan told us a little bit about him yesterday,
15 so I'll spare you the questions.

16 A. Okay.

17 Q. How long were you and Meagan together?

18 A. About two years.

19 Q. And is it correct that you're no longer together?

20 A. Correct.

21 Q. Do you maintain contact with each other?

22 A. Yes, ma'am.

23 Q. And what kind of things do you talk about when
24 you contact each other?

25 A. How I'm doing. How she's doing. How our son is

1 doing.

2 Q. Do you still have a cordial relationship with
3 Ms. Marlborough?

4 A. Yes, ma'am.

5 Q. Where are you living right now?

6 A. Forks, Washington.

7 Q. So did you have to fly in for testifying in this
8 trial?

9 A. Yes, ma'am.

10 Q. When did you get in?

11 A. Last night about 7:00.

12 Q. How was your flight?

13 A. Bumpy. Scary.

14 Q. Did you get enough rest last night?

15 A. A little bit.

16 Q. A little bit. Okay. Have you ever testified in
17 court before?

18 A. No.

19 Q. So this is your first time?

20 A. Yes, ma'am.

21 Q. Just want to let you know if there's a question
22 that you do not understand, it's imperative that you do
23 understand before you give your answer. So you're free to
24 ask me if you don't understand or anyone else to ask the
25 question in a different way if you don't understand.

1 A. Yes, ma'am.

2 Q. Back in 2012 -- is it okay if I call you Stephen?

3 A. Yes, ma'am.

4 Q. Back in 2012 where were you living?

5 A. Alvernon and Speedway. I forget the name of the
6 apartment complex. It was a long time ago.

7 Q. Here in Tucson?

8 A. Yes, ma'am.

9 Q. In Pima County?

10 A. Yes, ma'am.

11 Q. And who were you living with at that time?

12 A. My son and Meagan Marlborough.

13 Q. At that time, sometime during 2012, did you meet
14 a man by the name of Thomas Yates?

15 A. Yes, ma'am.

16 Q. Do you see him in the courtroom today?

17 A. Yes, ma'am.

18 Q. Can you point to him and describe an article of
19 clothing that he's wearing.

20 A. This gentleman right here. He's wearing a white
21 shirt.

22 MS. LEE: May the record reflect that the
23 witness has identified the defendant?

24 THE COURT: Yes.

25 BY MS. LEE:

1 Q. How did you meet the defendant?

2 A. Through Meagan.

3 Q. Tell us how that happened.

4 A. Meagan introduced us for him to do massages for
5 her since she does have back pains.

6 Q. Tell us a little bit about what you know about
7 Meagan's back pain.

8 A. She has degenerative disk disease and a couple of
9 fractures in her lower spine.

10 Q. During the entire time that you've known Meagan,
11 were you aware of these back issues?

12 A. Yes, ma'am.

13 Q. I said back issues, but I guess it's her spine to
14 be technically correct?

15 A. Yes, ma'am.

16 Q. And did these -- did this condition cause her
17 pain that you're aware of?

18 A. Yes, ma'am.

19 Q. So you said that you met the defendant through
20 Meagan. Tell us about the first time that you actually
21 got to meet him.

22 A. She brought him over to the house. We shook
23 hands. We hung out for I think about an hour. He
24 explained everything that was going on for the massages,
25 how he would do everything. Kind of explained how he

1 would do everything.

2 Q. So in that first meeting was the conversation
3 mostly focused on him as a masseuse or a massage
4 therapist?

5 A. Yes and no.

6 Q. What do you mean by that?

7 A. He explained kind of that he's disabled. He used
8 to do massages for a while. He just does them for fun now
9 to help out people that do have issues because he likes
10 doing it.

11 We talked about different movies that we had
12 in common. It was a scary movie. I don't like scary
13 movies, so I kind of zoned out at that point in time.
14 Just had a normal meet and greet type of thing.

15 Q. Where did this meeting occur?

16 A. At our apartment.

17 Q. Now, going back to the conversation regarding the
18 massages, did he tell you one way or another whether or
19 not he was a professional masseuse?

20 A. He did say at one point he was a professional
21 masseuse.

22 Q. At that point did you have any reason to not
23 believe him?

24 A. No, ma'am.

25 Q. So after that first meeting and conversation,

1 what was your impression of the defendant?

2 A. That he seemed like an okay guy. I didn't have a
3 negative feeling about him.

4 Q. Any concerns at all?

5 A. Well --

6 Q. At that time.

7 A. I always had concerns another guy touching my
8 woman. But if it helps her, I got to give up my pride. I
9 can't give a massage to save my life, so...

10 Q. After that first meeting did you either hang out
11 or talk to him after that as well?

12 A. Yes, we hung out a couple times.

13 Q. What would you say -- how would you define your
14 relationship with the defendant?

15 A. We were -- I could say we were friends.

16 Q. Did you trust him?

17 A. Yes.

18 Q. Were you comfortable with him?

19 A. Absolutely.

20 Q. Now, I'm going to shift gears and talk
21 specifically about the massages. How did you first find
22 out about the massage offer?

23 A. Through Meagan.

24 Q. What was your understanding of the -- the
25 arrangement, if you will, of --

1 A. What do you mean?

2 Q. Let me ask you a different question.

3 Where did the massages take place? So
4 actually before I ask that question, was there more than
5 one massage that the defendant gave Meagan?

6 A. Yes.

7 Q. And where did these massages take place?

8 A. At our apartment.

9 Q. Now, you were present at least one time when this
10 massage occurred; correct?

11 A. Correct.

12 Q. Tell us about that time.

13 A. That time Meagan was laying down with a towel
14 covered. He explained like where he would be touching.
15 That it was none of the boobs or the butt or the vagina
16 area. Can I say that?

17 Q. Yes, you can.

18 A. None in that area. That it was just strictly
19 like the arms, the stomach, the back and the legs.

20 Q. He explained that to you?

21 A. Correct.

22 Q. What else did you observe or --

23 A. That he stayed in those areas. That he didn't go
24 towards the boobs or to those other regions. He stayed
25 strictly with the legs, the stomach, the arms and the back

1 and shoulders.

2 Q. And during this massage were you trying to learn
3 what he was doing?

4 A. Yes, ma'am.

5 Q. And why was that?

6 A. Because I would like to give her a massage
7 myself.

8 Q. After that were you able to give her a massage?

9 A. Not as well, but...

10 Q. You tried?

11 A. I tried. I tried my best.

12 Q. Okay. All right. Other times would you leave
13 the defendant alone with Meagan for the massages?

14 A. Yes, ma'am.

15 Q. And why did you do that?

16 A. I was comfortable with the situation and just to
17 get away for a little bit where I knew she was safe, my
18 son was safe. I could escape for a little bit.

19 Q. Was there a time where you wanted to hang out and
20 watch the massage by any chance aside from that time that
21 you saw?

22 A. Yes and no.

23 Q. Okay. What do you mean?

24 A. Yes and no. Yes, I'd like to know -- be part of
25 it, but it was no, I didn't want to see another person

1 give my fiancée at the time a massage.

2 Q. But did you have -- I mean was it a problem for
3 you at all for him to give her massages?

4 A. No.

5 Q. Okay.

6 A. I can swallow my pride and, you know, say okay,
7 I'm not good at it.

8 Q. Okay. Do you know -- and only if you know -- how
9 the defendant felt about you being present during these
10 massages?

11 MR. SANDO: Objection. Speculation.

12 THE COURT: Sustained.

13 If he said something about it, ask it that
14 way. Otherwise...

15 BY MS. LEE:

16 Q. Did the defendant ever make any comments about
17 you being present during these massages?

18 A. No.

19 Q. Okay. Not to you?

20 A. Not to me.

21 Q. Okay. All right. Now, back in October of 2012
22 were you still living at this apartment complex that you
23 described for us earlier?

24 A. I was not.

25 Q. Okay. And -- well, to be clear, during the

1 entire time that you knew the defendant, were you living
2 at that same apartment?

3 A. Yes, ma'am.

4 Q. Okay. So do you remember the last time that a
5 massage occurred between the defendant and Meagan at your
6 apartment?

7 A. Yes.

8 Q. Were you present for the massage?

9 A. No, ma'am.

10 Q. Were you present when he got there?

11 A. Yes, ma'am.

12 Q. And then what did you to?

13 A. We met him at the door, opened the door, shook
14 his hand, told him to come in. Meagan was using the
15 restroom I believe. I'm not too sure on that. I know she
16 wasn't present when I opened the door. She came right
17 out. I told him that I wasn't going to be there. That
18 I'm going to go on a walk to just, you know, detox from my
19 day. And I took off after that.

20 Q. Did you know before he got there that he was on
21 his way or coming?

22 A. Yes, ma'am.

23 Q. So you went for a walk. And earlier you said
24 that you were comfortable with leaving Meagan with the
25 defendant.

1 A. Yes, ma'am.

2 Q. Now, expound on that for us a little bit. What
3 caused you -- because, you know, you're saying, I don't
4 like men touching my fiancée, but you reached a point
5 where you felt comfortable with him. Tell us how you
6 reached that point.

7 A. The reason why I felt --

8 THE COURT REPORTER: Sir, can you speak
9 louder, please.

10 THE WITNESS: Yes, ma'am. The reason why I
11 was comfortable was because Meagan was comfortable. We
12 talked. She didn't get any creepy feelings or any
13 vibes -- any bad vibes from him.

14 I felt comfortable enough that he in my
15 opinion -- in my mind he was making me comfortable with
16 the situation, which I respected. So I in turn felt
17 comfortable with him.

18 BY MS. LEE:

19 Q. And were you aware the defendant spent other time
20 with either you or both Meagan and you -- I'm sorry. With
21 Meagan or, you know, the three of you guys together
22 outside of, you know, a massage setting?

23 A. Yes, ma'am. He did come over a couple times
24 where we just hung out and watched movies, kind of BS'd so
25 to speak.

1 Q. And are you aware of whether or not he gave
2 Meagan rides to places?

3 A. He did a few times like where I believe it was
4 DES that she needed to go. And he offered to take her.
5 So it was -- I didn't have a car at the time, so he
6 volunteered and it was okay.

7 Q. Did all of these contribute to your opinion of
8 him?

9 A. Yes, ma'am.

10 Q. Now, you said you went on a walk. And eventually
11 did you come home?

12 A. Yes, ma'am.

13 Q. So tell us what you recall when you got home.

14 A. As I was walking up to the door, I was in front
15 of the door about to put the key in. I heard Meagan
16 scream, Get the F off of me. Get the F off of me. Get
17 the F out.

18 Quickly opened the door, unlocked the door,
19 walked in. And that's where I was seeing Meagan raise up
20 and the defendant kind of lean back off of her in a
21 surprised look looking at me.

22 I told him to get the F up and get out.
23 Meagan jumped up at that pint, came towards me. And I
24 asked her what was going on. She started crying. Told me
25 that he touched her.

1 Told him to get out. He stood up. To me it
2 appeared that he was pulling up his pants and then walked
3 towards us around the bed and walked out the door.

4 And then she explained what was going on
5 more in depth. And that's when we called the police.

6 Q. When you say -- to be clear, you didn't -- or did
7 you see him touching her at all?

8 A. No, ma'am.

9 Q. So you weren't present to observe any of that?

10 A. No, ma'am.

11 Q. Is it fair to say that you kind of saw the
12 aftermath?

13 A. Yes, ma'am.

14 Q. Now, when you say that after he left, Meagan told
15 you what had happened, what was your understanding of what
16 happened?

17 A. My understanding was he was touching her
18 inappropriately over her panties.

19 Q. Okay. And then so when the police are called,
20 who called the police?

21 A. I and her did.

22 Q. Together. Okay.

23 A. Yes, ma'am.

24 Q. And the police --

25 MR. SANDO: I'm sorry. I didn't hear that.

1 THE COURT: The both of them did together.

2 BY MS. LEE:

3 Q. And the police responded that night?

4 A. Yes, ma'am.

5 Q. Okay. After that night -- so you recall speaking
6 to the police that night?

7 A. They really didn't speak with me. It was more
8 speaking with her.

9 Q. With Meagan?

10 A. Yes, ma'am.

11 Q. But they did ask you a few questions as well,
12 though?

13 A. Yes.

14 Q. Now, how -- how long ago -- this was October of
15 2012. Is that correct?

16 A. I'm not sure on the date, but it was roughly
17 2012.

18 Q. Have you been thinking about this incident a lot
19 since it happened?

20 A. No, ma'am. I've been trying to forget it.

21 Q. Trying to forget it?

22 A. Yes, ma'am.

23 Q. After this incident occurred, did you ever hear
24 from the defendant again?

25 A. No, ma'am.

1 Q. Did he offer you any explanation for what was
2 going on when you walked into the room?

3 A. No, ma'am.

4 Q. Did he say anything at all to you?

5 A. No, ma'am.

6 Q. So when you asked him to leave, he just left?

7 A. Yes, ma'am.

8 Q. You said that, you know, you and Meagan decided
9 to call the police. And I don't want to assume, so I'm
10 going to ask you. Why did you decide to call the police?

11 A. Because a woman tells you to get the F off and
12 you don't, there's something wrong with that scenario.
13 You know, I'm a firm believer when a woman says no, it's
14 no and you stop what you're doing. And then she explained
15 to me what he was doing, you know, as best that she could
16 at the time. And then that's whenever we decided to do
17 it.

18 MS. LEE: No further questions, Your Honor.

19 THE COURT: Cross-examination?

20 MR. SANDO: Yes.

21 CROSS-Examination

22 BY MR. SANDO:

23 Q. Mr. Sumner, what was the time period you lived
24 with Meagan?

25 A. Approximately two years.

1 Q. And you're broken up now. You live in
2 Washington?

3 A. Yes, sir.

4 Q. You had some -- you had a conversation with her
5 about three weeks ago?

6 A. Yes, sir.

7 Q. Do you recall that conversation? Do you remember
8 me asking you what had happened?

9 A. I have conversations with her every day.

10 Q. Not about just trivial matters, but about this
11 incident?

12 A. Maybe.

13 Q. Did she say anything about where the touching
14 occurred in this call you received a few weeks ago?

15 A. She did say that it was over the underwear and
16 underneath the underwear.

17 Q. But you just testified that your understanding
18 was it was what she said, it was over --

19 A. At the time that was my understanding, yes, sir.

20 Q. But so she changed that understanding about a
21 year and a half later?

22 A. She never told me exactly what was going on. She
23 told me whenever I came in the house after the defendant
24 left that he touched her inappropriately.

25 Q. But you've testified, though, that your

1 understanding was over the panties?

2 A. Correct.

3 Q. Did you have any discussion about what the
4 position was with the hand and the thumb when you talked
5 to her?

6 A. No, I don't recall that.

7 Q. Did you have occasion to befriend Thomas on
8 Facebook?

9 A. No. That was Meagan on my Facebook account.

10 Q. So when was that? Was that after this happened?

11 A. No, this was before that happened.

12 Q. And your understanding was these messages take
13 about two hours?

14 A. Correct.

15 Q. Now, all this time you've said repeatedly that
16 you trusted him, felt comfortable with him. Is that
17 right?

18 A. Yes.

19 Q. So do you remember talking to a
20 Detective Aitchison?

21 A. I remember talking to a detective. I don't know
22 the detective's name.

23 Q. Do you remember telling him that you weren't
24 asked if it was okay, but the original agreement was that
25 he would -- that you would always be there involved?

1 A. Yes, sir.

2 Q. But you didn't feel like being there?

3 A. Correct.

4 Q. So when you walked out the two hours the night it
5 happened, you were never told to leave?

6 A. Correct.

7 Q. Do you know what time you left?

8 A. No, sir.

9 Q. Was it very late?

10 A. No.

11 Q. After 10:00?

12 A. I'm not too sure.

13 Q. Do you remember being asked if you returned about
14 midnight?

15 A. No, I don't remember that.

16 Q. Did you have your son with you?

17 A. No, sir.

18 Q. Where was the son?

19 A. He's asleep in his crib.

20 Q. Was there a problem with her son or your son the
21 night before he get sick or did he get sick that night?

22 A. I'm not too sure.

23 Q. You don't remember him getting sick?

24 A. He's been sick a couple times. I don't remember
25 or write those dates down.

1 Q. But you don't remember if he was sick the night
2 of this incident?

3 A. Correct. I don't remember.

4 Q. Now, you were present during these -- some of
5 these massages?

6 A. Correct.

7 Q. Not the first time, but the last couple of times?

8 A. I believe so.

9 Q. But you weren't present in the last one?

10 A. Correct.

11 Q. So when you were asked were you present, do you
12 remember saying, Not the first time, but the last couple
13 of times and then being asked, The last couple, so the
14 last two or three and saying, Maybe four?

15 A. No, I don't remember that.

16 Q. I'm going to show you what's been marked as
17 Defendant's Exhibit B.

18 MR. SANDO: May I approach the witness?

19 THE COURT: Yes.

20 BY MR. SANDO:

21 Q. I want you to look at page 4 here of this. It
22 starts with -- starts with -- you were asked, and you said
23 about four or five times.

24 MS. LEE: Objection.

25 BY MR. SANDO:

1 Q. Do you see that --

2 MS. LEE: Improper impeachment.

3 BY MR. SANDO:

4 Q. -- on page 3 on lines --

5 MS. LEE: Objection.

6 THE COURT: Hang on.

7 MS. LEE: Improper impeachment. If the
8 witness could have an opportunity to refresh his
9 recollection instead of reading from the transcript.

10 THE COURT: Correct. Let him look -- yeah,
11 let him read it first and then you can ask him a question
12 about it.

13 BY MR. SANDO:

14 Q. And the next page. Have you had time to see
15 that?

16 A. Yes, sir.

17 Q. Does that refresh your memory?

18 A. Not really.

19 Q. Have you seen this -- did you see your original
20 transcript of Detective Aitchison at any time?

21 A. Correct.

22 Q. When was that sent to you?

23 A. I'm sorry. Say that one more time.

24 Q. When was that sent to you, the transcript of the
25 interview with Detective Aitchison?

1 A. It was never sent to me.

2 Q. Did you look it over when you were interviewed?

3 A. Yes, sir.

4 Q. So in this transcript starting at the bottom of
5 page 3, you said you were present not the first time, but
6 the last couple of times; right?

7 A. Correct.

8 Q. So the last two or three. And you said, Maybe
9 four. Is that right?

10 A. As I read that, yes.

11 Q. But you weren't present on the last one?

12 A. Correct.

13 Q. But you just testified that you watched the first
14 one; right?

15 A. No, I watched the first one where we set it up
16 mutually.

17 Q. Okay. And then you tried to learn how to do a
18 massage?

19 A. Right. That was the first time that I was
20 involved.

21 Q. And then you said you left during the later
22 massages?

23 A. Correct.

24 Q. But according to what you said to
25 Detective Aitchison, you -- you were present at these

1 except for the last one. Is that right?

2 A. That's what it reads, yes.

3 Q. So which one is correct? That you were -- that
4 you did -- that he did one and you tried to learn, and
5 then you left during the later ones or that you were
6 present except for the last one?

7 A. I don't remember exactly where -- when I left.

8 Q. But I'm talking about the number.

9 A. I don't remember how many times. It was over two
10 years ago.

11 Q. Right. Well, I'm saying which one seems more
12 accurate? That you did one, then you tried to learn it,
13 then you left during all the other massages or that you
14 were present for the last two or three or four except for
15 the last one? Which one?

16 A. I wasn't present for the last one.

17 Q. Right. But you were present for the previous
18 ones?

19 A. Correct. Which I don't know how many he gave
20 her. I don't remember exactly how many massages there
21 were.

22 Q. But did you leave during the later massages, the
23 last two or three or four?

24 A. No. The last massage I left. And I would leave
25 periodically. I don't remember when I would leave my

1 house. I don't write that down either.

2 Q. Did all these massages take about two hours?

3 MS. LEE: Objection. Asked and answered.

4 MR. SANDO: I didn't.

5 THE COURT: Yeah, you did. Go ahead.

6 THE WITNESS: My understanding, I don't
7 remember.

8 BY MR. SANDO:

9 Q. In your interview with Detective Aitchison, do
10 you remember saying that Thomas was on the bed over top of
11 Meagan?

12 A. Yes, sir.

13 Q. Laying on top of her?

14 A. No, not laying on top of her. Over top of her.

15 Q. So --

16 A. Like sitting on the bed cockeyed, his feet on the
17 ground and leaning over Meagan. That was my perception.

18 Q. So propped up on his left arm?

19 A. No, he wasn't propped up. He was over. I don't
20 know where his arms or his -- I know where his legs were,
21 but I don't know where his arms were. I couldn't see that
22 from my perspective walking through the door.

23 Q. But he wasn't on his side?

24 A. He was leaning towards his side.

25 Q. Do you remember telling the detectives that he

1 wasn't on his side?

2 A. No, I don't recall that.

3 Q. If you'd look at that interview on page 7, lines
4 22 and 23.

5 MS. LEE: Your Honor, I'm sorry. My
6 transcript is the one from TPD. I think the one that's
7 being referred to is the one that was prepared by
8 defense's office. If he could use the TPD transcript
9 because I don't have the one that he's referring to.

10 THE COURT: Unless you have an extra one,
11 John.

12 MR. SANDO: They're one page difference
13 here.

14 MS. LEE: No. But I'm --

15 MR. SANDO: I'm sorry. I'm sorry. That's
16 my interview that I just asked about.

17 MS. LEE: Okay.

18 THE COURT: Not the TPD.

19 BY MR. SANDO:

20 Q. Do you see that on page 7?

21 A. Yes, line 22 and 23.

22 Q. And he said he was laying on his -- on this side,
23 and he said he wasn't on this side.

24 A. Yeah, he wasn't laying, referring to he wasn't
25 laying on his side. Leaning over on your side is not

1 laying on your side.

2 *Q.* And when you walked in, did Meagan tell you
3 that when you put the key in the door, that that's what
4 woke her up?

5 *A.* No, that's not my understanding. I heard
6 voices -- her saying, Get the F off of me. Get the F off
7 of me. That's whenever I entered the door.

8 *Q.* Okay. And you understood then it was over the
9 top of the panties?

10 *A.* Correct.

11 *Q.* And she didn't go into any other detail --

12 *A.* Correct.

13 *Q.* -- until you got that call in mid March, is that
14 right, when she went into detail?

15 *A.* I don't know what month it was.

16 *Q.* The interview I had with you March 20th, do you
17 remember saying -- do you remember being asked, Did she
18 ever go into any other detail?

19 No, not after that. Not until I want to say
20 about a week or two ago.

21 *A.* Correct.

22 *Q.* What was the detail?

23 *A.* That he was touching her underneath the panties.

24 *Q.* Anything else?

25 *A.* No.

1 Q. So when she called you up, you said that she --
2 you were talking since the beginning of February?

3 A. Correct.

4 Q. When you walked in and you saw what was
5 happening, you heard her scream, did you ever think of
6 taking any kind of physical action against him?

7 A. It's not my nature to. I wanted to. But I'm not
8 going to go to jail and lose my child for anyone.

9 Q. You said you thought he was pulling up his pants.
10 Do you remember telling the detective that he had baggy
11 pants and it looked like he was adjusting them?

12 A. No, I don't recall that, but he could have. I'm
13 not 100 percent sure if he was pulling up his pants,
14 adjusting his pants. I can only testify what it looked
15 like to me.

16 Q. Do you remember saying -- when the detective was
17 saying, Was he pulling them up? And do you remember him
18 saying, It wasn't down at his knees?

19 A. Correct.

20 Q. It was like baggy pants, trying to pull them
21 up --

22 A. Correct.

23 Q. -- like okay, so he's just trying to adjust
24 them?

25 Right.

1 Do you remember saying that?

2 A. Yes.

3 Q. Is that accurate?

4 A. Yes.

5 Q. When you came into town here, have you had
6 occasion to talk to Meagan in the last week or so?

7 A. I just came into town last night, but yes, we've
8 had -- in the last week we've had conversations.

9 Q. Okay. And did Meagan ever tell you about
10 anything about pills, prescriptions?

11 A. She was on prescription pills whenever I and her
12 were together.

13 Q. And that would be oxycodone?

14 A. And OxyContin.

15 Q. What's the difference?

16 MS. LEE: Objection.

17 THE COURT: Sustained.

18 BY MR. SANDO:

19 Q. How often did she take oxycodone or OxyContin?

20 A. I believe the OxyContin was twice a day and the
21 oxycodone was every three to -- or four to six hours.

22 Q. Four to six hours?

23 A. Correct.

24 Q. And what period of time was she taking oxycodone
25 and OxyContin?

1 A. I don't know. About a year and a half, two
2 years.

3 Q. Every day?

4 A. Correct.

5 Q. To your knowledge, did she -- was she still using
6 it after this incident?

7 A. Yes.

8 Q. Was she still using prescription --

9 MS. LEE: Objection. Relevance.

10 THE COURT: Sustained.

11 BY MR. SANDO:

12 Q. Okay. But you said she had taken some that day?

13 A. Correct.

14 Q. And they tend to make her sleepy?

15 A. No.

16 MS. LEE: Objection.

17 BY MR. SANDO:

18 Q. No? Okay. Would you look at page 13.

19 MS. LEE: Your Honor, can I just verify with
20 counsel that I have the same transcript? My page numbers
21 aren't lining up.

22 THE COURT: Yes.

23 BY MR. SANDO:

24 Q. Look at the bottom of page 13. Does that refresh
25 your memory?

1 A. Yeah.

2 Q. They do make her sleepy?

3 A. Not all the time, but sometimes. Which on rare
4 occasions whenever she's tired, she would take them. And
5 yes, she would fall asleep. But 90 percent of the time
6 they didn't make her tired.

7 MR. SANDO: If I could have a moment, Your
8 Honor.

9 BY MR. SANDO:

10 Q. You also were taking oxycodone during this time;
11 right?

12 A. Correct.

13 Q. For back problems?

14 A. Correct.

15 Q. Same kind of problem -- well, same back problem,
16 but a different kind. You've got screws in your lower
17 back; right?

18 A. And poles, yes.

19 Q. She has lower back problems too?

20 A. Correct.

21 Q. You said four or five times a day. Was she
22 taking those drugs at the time of the massage?

23 A. I don't recall.

24 Q. You did say about four or five a day?

25 A. Correct.

1 Q. And that would be oxycodone?

2 A. Correct.

3 Q. And how many times a day for OxyContin?

4 MS. LEE: I'm going to object to this line
5 of questioning, Your Honor.

6 THE COURT: Sustained. First of all, he's
7 already answered it. Second, he doesn't know what she did
8 that day. He's just talking about generally.

9 BY MR. SANDO:

10 Q. You don't know?

11 A. Correct.

12 Q. Also do you remember telling the officer that he
13 never made any advances towards Meagan?

14 A. Correct. Not -- in my presence he never did.

15 Q. Never acted in any kind of -- with any kind of
16 sexual desire or attraction, physical?

17 A. None that I can recall.

18 Q. You were just friends?

19 A. Yes.

20 MR. SANDO: Thank you. That's all.

21 THE COURT: Redirect?

22 REDIRECT EXAMINATION

23 BY MS. LEE:

24 Q. You were just asked several questions regarding
25 the medications that Meagan was on. You're not her

1 doctor, are you?

2 A. No, ma'am.

3 Q. Are you present to administer those pills to her
4 every single time she takes them?

5 A. No, ma'am.

6 Q. So you can only testify to what you've seen her
7 take?

8 A. Correct. On my days off, yes, ma'am.

9 Q. And you don't know how she is -- you don't know
10 her better than she knows her own self regarding the
11 effects of those medications on her?

12 MR. SANDO: Leading.

13 THE COURT: Overruled.

14 BY MS. LEE:

15 Q. Okay. Now, I just have a few more questions.

16 Just to clarify, you do recall being
17 interviewed by the defense attorney on this case?

18 A. Yes, ma'am.

19 Q. And was that last month?

20 A. Yes, ma'am.

21 Q. Would that be March of 2014?

22 A. Correct. Yes, ma'am.

23 Q. Okay. Now, some questions were asked you
24 regarding, you know, how many massages -- actually I
25 don't --

1 MS. LEE: May I approach?

2 BY MS. LEE:

3 Q. You were referred to page 2 -- or page 3 of your
4 transcript regarding the three or four times comment. Do
5 you remember that?

6 A. Yes, ma'am.

7 Q. Okay. Starting from line 38 on page 3 because I
8 want to be clear about your answers, can we read from
9 there to page 4, line 11. So I'll ask the question and
10 you'll give the response that you gave. Okay?

11 A. Okay.

12 THE COURT: Where are you beginning,
13 Counsel?

14 MS. LEE: Page 3, line 38.

15 BY MS. LEE:

16 Q. And he also gave you back rubs -- he also gave
17 back rubs to or body massages to Meagan?

18 A. Correct.

19 Q. And you said about four or five times?

20 A. It is. It is.

21 Q. Is it?

22 A. Is it? I'm sorry.

23 Q. Can you say?

24 A. I'm not too sure.

25 Q. Okay. You, uh --

1 A. About three or four times.

2 Q. Okay. And how many times did he come over to
3 your house or your apartment?

4 A. I'm not too sure. It was more than five or six
5 times.

6 Q. Now, prior to this incident happening, Stephen,
7 this incident where you called the police, there were a
8 few massages before that. We've established that; right?

9 A. Uh-huh.

10 Q. Is that a yes?

11 A. Yes.

12 Q. Okay. Were you keeping any sort of log or a
13 diary regarding the details of these massages?

14 A. No, ma'am.

15 Q. Before this incident occurred, was there any
16 reason for you to try to remember the details of every
17 single massage?

18 A. No, ma'am.

19 Q. So you weren't actively trying or keeping a log
20 of all of these other incidents before this day?

21 A. Correct.

22 MR. SANDO: Leading.

23 THE COURT: Sustained, but the answer can
24 stand.

25 MS. LEE: I have no further questions.

1 THE COURT: Jurors, any questions of
2 Mr. Sumner?

3 One of the jurors is a bit concerned --
4 confused about your testimony. So is it correct that when
5 you first spoke to the police, your understanding was and
6 therefore you told them that Mr. Yates touched Meagan over
7 her panties?

8 THE WITNESS: Correct. That was my
9 understanding.

10 THE COURT: And then later on Meagan told
11 you -- then clarified and said that it was over her
12 panties and under her panties. Is that correct?

13 THE WITNESS: Correct.

14 THE COURT: Okay. Anything else from the
15 jurors?

16 Any follow-up, anybody?

17 MS. LEE: I have one, Your Honor.

18 FURTHER REDIRECT EXAMINATION

19 BY MS. LEE:

20 Q. The night that Meagan told you what happened
21 after the defendant left, you were there. So tell us what
22 was Meagan's demeanor as she was telling you this?

23 A. She was very distraught. She was crying
24 hysterically. I was trying to calm her down.

25 Q. Was she excited to give you the details of what

1 happened to her?

2 A. No. It was -- she seemed ashamed. That she
3 didn't want to speak about it.

4 Q. Now, there was also that question about, you
5 know, having this conversation with Meagan a month or so
6 ago where she clarified that she was also touched
7 underneath her underwear. Aside from that detail, have
8 you and Meagan talked about the details of this case at
9 all?

10 A. No, ma'am.

11 MS. LEE: No further questions.

12 THE COURT: Anything else, John?

13 RECROSS EXAMINATION

14 BY MR. SANDO:

15 Q. The difference between your understanding it was
16 over the panties and then your phone call last month,
17 we're talking about a year and a half, aren't we?

18 A. Over a year and a half, correct.

19 Q. Between the two stories?

20 A. Yeah.

21 Q. Between your understanding and what she told you
22 on the phone?

23 A. My understanding -- the only reason why I can say
24 it's my understanding is that she said, He touched me
25 inappropriately. I took it as it was over the panties. I

1 didn't know that it was underneath. I just assumed that
2 it was over.

3 Q. And that's what you told the detective when you
4 were interviewed? Your understanding was over the
5 panties?

6 A. Correct.

7 MR. SANDO: That's all.

8 THE COURT: All right. May Mr. Sumner be
9 excused?

10 MS. LEE: Yes.

11 THE COURT: Okay.

12 Deborah.

13 MS. LEE: State calls Detective Dobell to
14 the stand.

15 ROBERT DOBELL

16 The witness, after being sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. LEE:

19 Q. Good morning.

20 A. Good morning.

21 Q. Can you please introduce yourself to the jury.

22 A. Yes. My name is Robert Dobell. I'm a detective
23 with the Tucson Police Department.

24 Q. How long have you been with the Tucson Police
25 Department?

1 A. Approximately 13 and a half years.

2 Q. And what is your current assignment?

3 A. My current assignment as detective I'm assigned
4 to the adult sexual assault unit.

5 Q. Tell us what that job entails.

6 A. As a detective with the adult sexual assault
7 unit, we investigate sex offenses including sexual abuse,
8 sexual assault, indecent exposure, public sexual
9 indecency.

10 Q. And I apologize. You already mentioned this.
11 But how long have you been in that detail?

12 A. I've been with that unit approximately a year and
13 a half.

14 Q. Now, can you please tell the jury a little bit
15 about your training and experience that you had to go
16 through in order to be where you are today.

17 A. In 2000 I attended the Southern Arizona law
18 enforcement training academy. That was a 15-week program.
19 From there I went to a 15-week field training program
20 which was assigned to an officer through my patrol work
21 for a new job.

22 From there I did patrol work for seven years
23 investigating various crimes including shoplifting,
24 burglaries, robberies, assaults, things of that nature,
25 traffic violations.

1 In March of 2008 I was promoted to the rank
2 of detective. And for the first four and a half years as
3 a detective I was assigned to the dependent child unit.
4 In that unit we were responsible for investigating crimes
5 of child abuse, child homicide, child death, neglect,
6 emotional and physical abuse.

7 And then in August of 2012 I was assigned to
8 the adult sexual assault unit.

9 Q. And was there any specialized training that you
10 had to undergo to be in the unit that you are today, the
11 adult sex crimes unit?

12 A. None specific to the unit itself as far as -- I
13 have been to some classes involving investigations of sex
14 assaults involving the use of DNA. Once you're promoted
15 to a detective, you attend a 40-hour basic detective
16 school that's sponsored by the department. I have
17 attended classes recognizing signs and symptoms of child
18 abuse, interviewing and interrogations at the John Reed
19 school. So basically they're ongoing to a sexual assault
20 unit. It's been more of a hands-on learning issue,
21 though, as far as investigating crimes of that nature.

22 Q. Now, back in October of 2012 were you in the
23 adult sex crime unit?

24 A. I was.

25 Q. And were you assigned to do further investigation

1 on a case involving the defendant, Thomas Yates?

2 A. Yes, I was.

3 Q. Okay. I know you've been sitting through the
4 trial, but do you have a recollection of what he looks
5 like and can you identify him?

6 A. He is sitting at the defense table. He's wearing
7 a white shirt.

8 MS. LEE: May the record reflect the witness
9 has identified the defendant?

10 THE COURT: Yes.

11 BY MS. LEE:

12 Q. So tell us how you got assigned. What's the
13 process?

14 A. Normally what happens is -- in this case here
15 involving Mr. Yates and Ms. Marlborough, this was
16 initially investigated by my detectives. They went out
17 and responded to the call because it happened -- the call
18 came in sometime I think around 1:30 in the morning of
19 October 5th I believe it was. And they went out, did the
20 initial interviews, did what they had to do.

21 And then the case because the nature of the
22 crime was a sex offense, it was then assigned to my unit
23 for follow-up investigation and my supervisor turned the
24 case over to me for follow-up.

25 Q. Now, you said that initially a night detective

1 investigated the case. Did I hear that right?

2 A. Correct.

3 Q. Can you explain for us what the difference is
4 between what a night detective does and what you would do.

5 A. The night detectives that we have in the Tucson
6 Police Department, they are not assigned to a specific
7 investigative unit like I am. I'm assigned to the adult
8 sexual assault. We have other units such as robbery,
9 burglary, fraud, domestic violence. Those are all
10 specialized investigative units.

11 What happens with the night detectives, they
12 are there at nighttime. They will go out and investigate
13 various crimes, whether it's domestic violence, homicides,
14 robberies, aggravated assaults, whatever.

15 They'll go out. They'll triage the
16 incident. Speak to the officers that were the initial
17 responders. Get all the information of victims,
18 witnesses, suspects. Do whatever interviews they can. If
19 an arrest is needed, they have enough probable cause and
20 evidence, they can make the arrest.

21 And then from there, regardless of whether
22 an arrest is made or not, however far they get into the
23 investigation, it is then turned over to the unit that is
24 specific for that type of crime. As in this case here,
25 Ms. Marlborough was a sex crime.

1 Once the detectives did what they had to do,
2 it was then turned over to that specific -- to me to
3 follow up.

4 Q. So if I understand you correctly, it sounds like
5 a night detective doesn't have a caseload or do follow-up
6 investigation. Is that correct?

7 A. Correct. But they -- again, they'll do some
8 triage that they have to do, interviews, collect evidence,
9 make arrests if they have to. And then it gets turned
10 over to a detective from that specific unit for follow-up
11 or may be issued to the county attorney.

12 Q. So you were assigned to this case by your
13 supervisor?

14 A. Correct.

15 Q. So kind of walk us through what your follow-up
16 investigation entailed.

17 A. After the case was assigned to me, I went back
18 out and I conducted a follow-up interview with the victim,
19 Ms. Marlborough. I collected DNA samples in the form of
20 what they call buccal swabs.

21 And buccal swabs, those are -- it's a -- to
22 put it in layman's terms, it's a giant Q-tip. And what we
23 do is we roll it on the inside of the cheeks of the mouth,
24 and then that is placed into evidence. So that's how we
25 would collect DNA from the individual.

1 The -- in addition to collecting buccal
2 swabs, these swabs -- the underwear that was collected at
3 the scene and also the pills that were collected at the
4 incident location, those were submitted to our department
5 crime lab for testing.

6 I conducted follow-up interviews with the
7 defendant, Mr. Yates and I also conducted further
8 investigation to see if there had been any other similar
9 incidents for this type of a crime.

10 Q. When you say similar incidents, are you
11 specifically referring to allegations made against the
12 defendant?

13 A. Yes.

14 Q. Now, I'll walk through each piece of your
15 investigation starting with the victims. So I think that
16 that was the first thing that you did after you -- I'm
17 assuming you review what the night detective and the
18 responding officers do before you go out and do follow-up
19 interviews?

20 A. Correct.

21 Q. And so you said that you followed up with Meagan.
22 Do you remember the date of that interview or an estimated
23 timeframe from the incident?

24 A. I believe it was around October 18th of 2012 I
25 made contact with her.

1 Q. Okay. So about a couple weeks after the
2 incident?

3 A. Yes.

4 Q. And you said that you did review
5 Detective Aitchison's report regarding the victim's
6 statements?

7 A. Correct.

8 Q. While you were interviewing her, did you remember
9 the statements that she had made to Detective Aitchison
10 regarding the night that her son got sick?

11 A. No, I don't. I knew that Detective Aitchison had
12 an interview with her, but specifics, no.

13 Q. Okay. So you didn't remember that detail when
14 you were interviewing her?

15 A. Correct.

16 Q. And regarding -- I know that there was some
17 mention earlier in the trial about right and left
18 clarifications. Did you give her an opportunity to, you
19 know, clarify all of that so that it made -- it was
20 consistent with what your understanding was?

21 A. I asked her what had happened, positions. She
22 told me. And, again, I did not clarify with her.

23 Q. Her disclosure regarding the touching of her
24 vagina and the thumb being in her mouth were consistent
25 between her disclosure to you and to Detective Aitchison;

1 correct?

2 A. Correct.

3 Q. Now, sometime after this interview with Meagan,
4 there was a confrontation call that was done?

5 A. Yes, ma'am.

6 Q. Okay. Describe for the jury what a confrontation
7 call is and how that all works.

8 A. What a confrontation call is, it's a tool that we
9 use. We use this when we have victims to confront the
10 accused or if we -- like in the child abuse unit we would
11 have a non-offending parent confront the offending parent.
12 Because a child being as young, you know, wouldn't be able
13 to have a phone conversation with the accused.

14 So what we do is -- it's helpful when we
15 don't have a lot of physical evidence for a case. We'll
16 use a confrontation call to allow the victim to contact
17 the accused and talk to them and to basically accuse to
18 make a statement that -- what they had done to get them
19 basically to admit that they committed whatever crime it
20 is that has been alleged.

21 Q. Do you find this investigation technique useful
22 in these types of crimes?

23 A. I do.

24 Q. And do you use them often in your investigations?

25 A. When it is appropriate, yes, I will use those.

1 Q. Did you determine that it was appropriate in this
2 case?

3 A. I did.

4 Q. So do you remember when the confrontation call
5 was done?

6 A. It was a couple of days -- maybe around -- I
7 think -- I want to say around October 23rd I believe. It
8 wasn't too long after I had made my initial interview with
9 Meagan.

10 Q. So towards the end of October?

11 A. Yes, ma'am.

12 Q. And how did you prep Meagan for the call?

13 A. I explained to her that when she makes this call,
14 basically for -- I give the same instructions to all the
15 victims when we do these confrontation calls, is to be
16 yourself. Don't be using language that you normally
17 wouldn't be using. Talk like you normally would.
18 Don't -- you know, don't do anything out of the ordinary
19 that -- if you talk a certain way, talk that way.

20 Q. And is there any specific type of ruse or any
21 kind of game plan that you have going into the call?

22 A. Yes.

23 Q. What was that in this case?

24 A. In Meagan's case because we were wanting -- I was
25 wanting to know, one, about the pills that she had turned

1 over to the police that she had Mr. Yates had given her
2 and also to confirm the touching, to get him to admit that
3 he had touched her inappropriately.

4 The initial ruse was to have her explain to
5 him that she was going to be going to a doctor's office
6 because she was having some ill side effects from her
7 medications. And in doing so, the doctor was going to
8 want to know what all medications have you been taking
9 recently. And she wanted to be able to tell the doctor
10 that, Hey, these pills that, you know, Mr. Yates gave me,
11 you know, this was some stuff that I been taking.

12 And she was -- she just wanted to make sure
13 that, you know, these pills that he had given her that
14 night weren't creating any side effects with the
15 medication that she was already taking.

16 *Q.* So you explained this to Meagan. And did Meagan
17 understand what the plan was?

18 *A.* She did.

19 *Q.* Now, in terms of the technical aspects of
20 confrontation calls, they are recorded; correct?

21 *A.* Yes, they are.

22 *Q.* So can you explain to the jury how that's all
23 done.

24 *A.* Well, there are a couple ways we can record the
25 confrontation calls. It depends upon the setting. In

1 Ms. Marlborough's case the phone when she made the phone
2 call, she put it on speaker. And I had my recorder, my
3 digital recorder, and I recorded that conversation.

4 A couple other ways that we can do this, we
5 have an earpiece that the caller would be wearing. It's
6 basically reversed so that -- and this earpiece would be
7 plugged into a recorder. And this earpiece would pick up
8 all the verbiage whether -- what's been spoken, what's
9 being heard from the phone and we record that.

10 Another way we have to record these
11 conversations is that we can actually plug in to -- it's
12 plugged into a phone like a regular desk phone. And this
13 adapter -- it's a wired system that connects in between
14 the handset and the base of the phone. And there's a
15 little adapter where I can plug in the recorder. And then
16 once the conversation begins, I just record it.

17 Q. Were you present during this entire call to
18 listen in on what was being said?

19 A. I was.

20 Q. And did you record the entire call from beginning
21 to and?

22 A. I did, yes.

23 MS. LEE: Your Honor, may we approach?

24 THE COURT: Yes.

25 (The following proceedings held at sidebar.)

1 MS. LEE: Is it possible to break and come
2 back 20 minutes earlier so I can set up equipment to play
3 the confrontation call?

4 MR. SANDO: Fine.

5 I should note four witnesses she's not
6 calling. I don't know if I can get them in here this
7 afternoon.

8 THE COURT: Try to help --

9 (The following proceedings held in open
10 court.)

11 THE COURT: All right. So what we'll do is
12 you're going to hear the in air quotes confrontation call,
13 but it's going to take a little bit to set up the
14 equipment and so forth.

15 So let's go ahead and take our lunch break
16 now and then come back right at 1:00. And then we'll hear
17 that then and then there's some more witnesses that will
18 be available this afternoon. Okay?

19 So remember the admonition. Leave your
20 notes and notebooks here. Ben will take care of that.
21 And then I'll see you back at 1:00.

22 (The jury exited the courtroom.)

23 THE COURT: Okay. Show the absence of the
24 jury. Anything else until after lunch?

25 MS. LEE: No.

1 THE COURT: Okay. All right. I'll see you
2 at 1:00.

3 MS. LEE: Thank you.

4 (Lunch recess taken.)

5 THE COURT: We're on the record. 20132921.
6 Mr. Yates is present, counsel is present.

7 You're up.

8 MS. LEE: Well, defense counsel just asked
9 me if Stephen Sumner could be recalled to the stand. He
10 just had one question for her.

11 THE COURT: Him.

12 MS. LEE: For him. I'm sorry. The issue is
13 Officer Altman, I never intended on calling.

14 THE COURT: Right.

15 MS. LEE: His supplement is about a
16 paragraph and a half long. Officer Altman, Mr. Sando told
17 me this morning that he wanted to call Officer Altman.
18 Our office called him to let him know. He has a very
19 important medical appointment this afternoon that he
20 cannot miss and tomorrow he is out of town. So I -- I
21 don't know -- there's that.

22 Secondly, I'm not sure if it's proper to --
23 what defense counsel wants to do is to impeach Meagan I
24 guess, her statement that she was just wearing her bra and
25 panties by using Stephen's statement that

1 Officer Altman said that he made to him that he saw her
2 pulling a top over her breasts. Which I just showed that
3 report to Stephen, and he says, I don't recall saying that
4 statement.

5 And so at this point I don't think that that
6 is really an issue that needs to be made, an issue to the
7 point where we need to call Officer Altman back.

8 So my concern bottom line is that I don't
9 think Officer Altman is going to be available to come and
10 testify. I don't want to delay this trial. And I don't
11 think that -- that's my concern. That's it, Your Honor.

12 THE COURT: Okay. John, what do you want?

13 MR. SANDO: He was on the list of witnesses.
14 He's in the pretrial statement. I thought they were going
15 to call him until the beginning of the trial.

16 THE COURT: Was he under subpoena by you?

17 MS. LEE: I'm not sure, Your Honor.

18 MR. SANDO: I thought they all were.

19 MS. LEE: I'm not sure if he is, but he -- I
20 mean we were able to get in touch with him today.

21 THE COURT: I understand.

22 MS. LEE: But I never intended to call him.

23 THE COURT: So --

24 MR. SANDO: She didn't intend to call
25 several other officers that I'm -- and Rankin that I

1 called. The reason I'm doing that -- may I approach?

2 THE COURT: Yes.

3 MR. SANDO: The second to last sentence in
4 the paragraph right there, I think it's really important.
5 Obvious credibility problems, but I think it's important.
6 He was listed as a State's witness. I thought all along
7 he was going to be called. And that's the only reason I
8 was going to use him, for that statement. But now the
9 witness doesn't remember making it.

10 MS. LEE: Well, Your Honor, the fact of the
11 matter is Mr. Sumner has been accused from the witness
12 stand. The defense forgot to ask him about those
13 questions. So really I don't think that it's fair for
14 defense to say this was his plan all along when he never
15 even asked Mr. Sumner about that statement to properly try
16 to impeach him.

17 I don't think that -- I don't think that
18 that issue, that inconsistency regarding whether or not
19 she was wearing a top, goes to whether or not -- first of
20 all, Mr. Sumner wasn't present to see the actual sexual
21 abuse happen. He's just testifying to what he recalls
22 seeing when he walked into the door.

23 On top of that, Officer Altman did not
24 record any interview or statement taken from --

25 THE COURT: I understand.

1 All right. Stephen is still here. You can
2 call him as a witness if you want to. But rather than
3 wait until the end of your case, let's just recall
4 Stephen.

5 MR. SANDO: That's fine.

6 THE COURT: You ask him if he made these
7 statements. If he says no, I don't remember, you ask him,
8 Well, if it's in the officer's report, then apparently
9 it's incorrect?

10 Apparently it is because that's not what I
11 saw. That's not what I said. And we're done.

12 MR. SANDO: That's why I wanted --

13 MS. LEE: What if Officer Altman is
14 unavailable to come?

15 THE COURT: We're not asking Altman. We're
16 just going to ask Stephen.

17 MS. LEE: Okay.

18 THE COURT: And John's going to say, Well,
19 Stephen, look at Officer Altman's report. Do you see what
20 it says?

21 Yes.

22 And it says that when you came in, you saw
23 Meagan pulling something over her breasts, whatever the
24 specific language is.

25 And he'll say, Yeah, I see that, but I don't

1 remember that nor do I remember saying that. And that's
2 that. We're done. The jury then knows it's in Altman's
3 report. He says he doesn't remember or it didn't happen.
4 Altman's incorrect and we're done. Okay?

5 MS. LEE: Okay.

6 THE COURT: Can I still have five minutes
7 myself? I just need to make a quick phone call.

8 (Court in recess.)

9 THE COURT: We're on the record. 20132921.
10 The jury is not here.

11 MR. SANDO: There's a couple witnesses,
12 obviously State's witnesses I want to call, Rankin,
13 Aitchison and Frank. There seemed to be some scheduling,
14 so my paralegal told them to be here at 10:30. But did
15 you say 9:00 at the end of the trial?

16 THE COURT: I did.

17 MR. SANDO: So I'll have to reschedule them
18 at 9:00 except that apparently Officer Frank is available.
19 He won't take long this afternoon.

20 THE COURT: Fine. Great. Works for me.

21 MS. LEE: So Rankin and Frank will be called
22 by defense this afternoon and then Aitchison will be
23 called in the morning?

24 MR. SANDO: No, not Rankin.

25 THE COURT: Can she be here --

1 MR. SANDO: Not --

2 MS. LEE: She is available this afternoon.

3 MR. SANDO: I wanted to do it in the
4 morning. Joshua planned on doing the examination. And
5 the examination will take more than 20 minutes. We
6 can --

7 MS. LEE: We can call her out of order.

8 THE COURT: Be quiet. Let John finish
9 talking.

10 MR. SANDO: He has a class he can't miss at
11 3:00.

12 THE COURT: All right.

13 MR. SANDO: And she's going to be finishing
14 up. So the only one I think I can call today is Frank.
15 He's available.

16 THE COURT: All right. And you need to
17 leave by 2:30 to get to your class?

18 MR. FURMAN: It's actually at 3:30.

19 THE COURT: You can leave at 3:00 then. So
20 how much time -- we have to put Stephen back on. That'll
21 take two minutes. And then you have who else? Maria and
22 James? So that'll take us until probably 3:00 anyway;
23 right?

24 MR. SANDO: Right.

25 THE COURT: So we'll settle instructions.

1 We'll send the jury home. We'll settle instructions.
2 Come back tomorrow morning. Rankin and the other one
3 tomorrow morning.

4 BY MR. SANDO: Okay.

5 THE COURT: You'll rest. I'll instruct.
6 We'll do closing arguments. We'll be done by noon. We're
7 starting at 9:00 tomorrow, not 10:30.

8 BY MR. SANDO: Okay.

9 THE COURT: That work for you, Deborah? Now
10 you can talk.

11 BY MR. SANDO: 9:00?

12 THE COURT: Yes.

13 MS. LEE: I would really like to do Nora
14 today even if it's out of order.

15 MR. SANDO: Can't do it.

16 THE COURT: Yeah. Well, you want -- oh, you
17 mean do her --

18 MS. LEE: Out of order.

19 THE COURT: -- right now you mean or as soon
20 as she could walk over here?

21 MS. LEE: We can do it right now whenever
22 she can come over.

23 MR. SANDO: Your Honor, we plan on calling
24 her as the last witness. It'll take a half hour. We can
25 do it in the morning.

1 THE COURT: Okay. We'll do it in the
2 morning.

3 All right. So we're going to play the --
4 when Ben brings the jury in, we're going to play that
5 confrontation call?

6 MS. LEE: Can we call Stephen Sumner first?

7 THE COURT: Oh, yeah, we'll do that first.
8 Sure. Okay.

9 THE BAILIFF: Jury entering.

10 (The jury entered the courtroom.)

11 THE COURT: All right. 20132921. Jurors
12 are present, Mr. Yates, all the lawyers. Go ahead and sit
13 down.

14 All right. So we're going to -- there was a
15 little modification of what we're going to do. So we're
16 going to recall Stephen Sumner.

17 And John, are you calling him?

18 MR. SANDO: Yes.

19 THE COURT: Okay. So we're going to go out
20 of order a little bit because the State didn't rest yet.
21 But Mr. Sumner's here, and there were a couple of
22 questions that Mr. Sando wanted to ask him. So we're
23 going to call Stephen back up to the stand. He's still
24 under oath. We'll take care of that.

25 Then after that we'll go back to the State's

1 case. And the State wants to play that confrontation call
2 for you. And then we have a couple more witnesses this
3 afternoon. And we're probably going to break a little
4 early. I know you'll all be disappointed about that. But
5 we're probably going to break a little earl this
6 afternoon.

7 Tomorrow morning when we resume there's
8 going to be two witnesses that are rather brief. And then
9 if Mr. Yates decides to testify, we'll hear from him. If
10 he decides not to, I'll instruct you. You'll hear closing
11 arguments. And you'll probably start deliberating by
12 lunch time. Okay? So that's the plan.

13 All right. Mr. Sumner, come on back up
14 would you, please.

15 STEPHEN SUMNER

16 The witness, having been previously sworn, testified as
17 follows:

18 DIRECT EXAMINATION

19 BY MR. SANDO:

20 Q. Stephen, there was one matter I wanted to ask you
21 about and forgot. It's in reference to a conversation you
22 had with Officer Frank the day of the incident. You've
23 read this report. Is that right?

24 A. Correct.

25 MR. SANDO: May I approach the witness, Your

1 Honor?

2 THE COURT: Yeah.

3 BY MR. SANDO:

4 Q. I'm showing you what's been marked as Defendant's
5 Exhibit D. Did you just look through this police report?

6 A. Yes, sir.

7 Q. And it's of Officer Frank on October 5th?

8 A. I'm not too sure of the date.

9 Q. It was the day of the incident.

10 A. Okay.

11 Q. The officer reports that, As he -- that's you --
12 stepped inside, he saw Meagan pulling a top over her
13 breast area and she was still only wearing panties.

14 Is that in the report?

15 A. That's what that report says.

16 Q. Do you remember saying that?

17 A. No, I do not.

18 Q. So the officer would be incorrect?

19 A. Correct.

20 MR. SANDO: That's all.

21 THE COURT: Any redirect? Or no, now it's
22 cross.

23 CROSS-EXAMINATION

24 BY MS. LEE:

25 Q. Well, when you were asked if that's incorrect, I

1 want to clarify. Is it that you don't recall saying that
2 or you didn't say that?

3 A. I don't recall saying that.

4 Q. You don't recall saying that?

5 A. Correct.

6 MS. LEE: Okay. Nothing further.

7 THE COURT: Jurors, anything?

8 Okay, Stephen, thanks. Now you're done.

9 THE WITNESS: Thank you.

10 THE COURT: I don't promise you, but I think
11 so.

12 Okay. Back to the State's case. And are
13 you ready to play the -- what exhibit is that, by the way,
14 the tape?

15 MS. LEE: Exhibit 2, Your Honor. And State
16 moves to admit it at this time.

17 THE COURT: John, any objection?

18 MR. SANDO: No.

19 THE COURT: Okay. Exhibit 2 is admitted and
20 it can be published.

21 (Exhibit 2 admitted.)

22 MR. SANDO: I believe the rule has been
23 invoked. Mr. Sumner's still in the courtroom.

24 THE COURT: Well, he's been excused now.

25 Okay. So 2 is admitted, and you're going to

1 listen to it.

2 MS. LEE: And, Your Honor, I did make copies
3 for reference during the audio publishing of the
4 confrontation call, and I'll collect these afterwards.

5 THE COURT: Hang on a second. Do you have
6 any objection to that, John, for them to follow along with
7 transcripts and the transcripts to be collected after the
8 audio is played?

9 MR. SANDO: That's fine.

10 THE COURT: Okay. Go ahead.

11 MS. LEE: Your Honor, may I approach.

12 THE COURT: Yes.

13 (The audio played.)

14 THE COURT: Would you pass the transcripts
15 down to one end or the other and then Ben will collect
16 them from you.

17 So the way this works, ladies and gentlemen,
18 if you want to listen to that again when you deliberate,
19 you can, but you have to rely on the recording, not the
20 transcripts. So the transcripts won't be given back to
21 you at all.

22 Detective Dobell is now back on the stand,
23 and he's still under oath as well.

24 ROBERT DOBELL

25 The witness, having been previously sworn, testified as

1 follows:

2 DIRECT EXAMINATION

3 BY MS. LEE:

4 Q. Detective, I know you're no doctor, but are you
5 familiar with the drug Soma?

6 A. Yes.

7 Q. Is it a prescription medication?

8 A. Yes, it is.

9 Q. Are you familiar with the drug Seroquel?

10 A. Yes, I am.

11 Q. Is it a prescription pill --

12 A. Yes, it is.

13 Q. -- or drug? I'm sorry.

14 A. Yes.

15 Q. Are you aware of whether or not Seroquel is
16 sometimes prescribed as a sleep aid?

17 A. Yes.

18 Q. And is that a yes, it is or --

19 A. Oh, I'm sorry. Yes, it is.

20 Q. Now, I'm going to now shift from the
21 confrontation call to some other aspects of your
22 investigation.

23 A. All right.

24 Q. You stated that you also collected -- or no, you
25 didn't collect the pills, but you submitted the pills for

1 analysis?

2 A. Yes, correct.

3 Q. Okay. And my understanding is that there were no
4 narcotic pills that were -- or, I'm sorry, narcotics that
5 were depicted in the analysis of those pills?

6 A. Correct.

7 Q. Was the lab able to determine what those pills
8 were?

9 A. No, ma'am.

10 Q. Now, the confrontation call, the victim's
11 interview, submitting the evidence for analysis, was that
12 all done in the month of October of 2012?

13 A. Correct.

14 Q. And then after that, what did you do in terms of
15 your investigation?

16 A. The next thing I did was set up an interview with
17 Mr. Yates.

18 Q. Okay. And I'm going to get into that. But just
19 before I do, at some point in your report -- is there any
20 indication that you've closed the report or the
21 investigation at a certain point?

22 A. Yes, there is.

23 Q. Can you just explain to us what you meant by
24 that, when that happened and the circumstances surrounding
25 that.

1 A. Okay. In February of 2013 I got to the point in
2 my investigation where I had no additional leads to follow
3 up on. So what we will routinely do in my office is if we
4 have any kind of lab work that we're waiting on, any kind
5 of forensics, whether it's DNA, drug testing, latent
6 fingerprints, we'll stop the active investigation, we'll
7 make a notation in our report the case is closed pending
8 forensics and what have you.

9 And this is what I did in my case. In
10 February of 2013 I closed the case pending forensic
11 analysis reports to come back. Then once I got those,
12 that was going to determine where I needed to go next in
13 my investigation.

14 Q. So when you say that you closed the
15 investigation, that doesn't necessarily mean that the
16 investigation is over and done with?

17 A. Correct. It's just temporarily halted.

18 Q. An administrative procedure, would that be
19 accurate to say?

20 A. Yes.

21 Q. Okay. Now, you said after the things you did in
22 October, you set up an interview with the defendant in
23 December?

24 A. Correct.

25 Q. Okay. And that's December of 2012?

1 A. Yes. I'm sorry.

2 Q. Okay. So I'm going to ask you about some
3 statements that the defendant made to you during that
4 interview. First of all, where was that interview
5 conducted?

6 A. This took place at the defendant's home.

7 Q. Okay. Was he under arrest at all or in custody
8 at all?

9 A. No.

10 Q. And he agreed to answer your questions?

11 A. He did.

12 Q. And he told you that the relationship started by
13 him giving her, meaning Meagan, his phone number and
14 telling her to call him if she ever needed anything like
15 rides?

16 A. Correct.

17 Q. He admitted that he knew at that time that she
18 didn't have a car?

19 A. Yes.

20 Q. And that he knew that she had medical issues and
21 specifically, quote, severe back problems?

22 A. Yes.

23 Q. When he was asked, you know, to kind of define
24 their relationship, did he say that they were
25 acquaintances working on becoming friends?

1 A. Yes.

2 Q. And then did he make the statement that he was
3 fond of her?

4 A. Yes.

5 Q. Did he say he was fond of her?

6 A. Yes.

7 Q. But when asked to clarify, did he say that he was
8 not interested in her in a relationship type manner?

9 A. Yes.

10 Q. Did he make comments to you regarding the fact
11 that he knew that Meagan viewed him as someone that she
12 could trust?

13 A. Yes, he did.

14 Q. Did he tell you that he knew that she was
15 someone she could -- did he say, I was someone she knew
16 she could talk to if she had a problem or something, I
17 would listen?

18 A. Yes.

19 Q. Did he say, She looked up to me as, you know,
20 someone that she could talk to and that she could feel
21 comfortable with?

22 A. Yes, he did.

23 Q. Now, did you ask him specific questions regarding
24 the messages that took place at Meagan's home?

25 A. I did.

1 Q. Did he corroborate Meagan's statement that the
2 first time he performed a massage on her that Stephen
3 wasn't there?

4 A. Correct.

5 Q. Okay. And did he corroborate with her statement
6 that the second time he went for a massage, the victim,
7 Meagan, asked him to show Stephen how to do the massages?

8 A. Yes.

9 Q. And then did he also state that between the
10 second and third time, they watched a movie called
11 Paranormal Activity together at their home?

12 A. Yes, he did.

13 Q. And then did he also corroborate the statement
14 that the last time the massage took place, the victim
15 asked him to come over and work on her -- to work on her?

16 A. Yes.

17 Q. And that she used a towel or a blanket to cover
18 herself up?

19 A. Yes.

20 Q. And he corroborated that there was never any
21 payment -- never anything in exchange for these massages?

22 A. Correct.

23 Q. Did he tell you that he did these massages just
24 as a friend and, quote, if I can help relieve someone's
25 pain, I will?

1 A. Yes.

2 Q. And he admitted that he worked on her shoulders,
3 the small of her back, her legs and feet?

4 A. Correct.

5 Q. He also corroborated that he would sit on the
6 side of the bed?

7 A. Yes.

8 Q. Did he tell you how long he had been doing these
9 massages for?

10 A. I believe he said it was over 20 years.

11 Q. And did he tell you that he was a professional
12 masseuse or a self-taught masseuse?

13 A. He was self-taught.

14 Q. And when asked how many massages he had done in
15 the 20-plus years, what did he answer?

16 A. I believe he said it was a dozen or dozens. It
17 was a small amount.

18 Q. Did he say that he kept it just to friends?

19 A. Yes, he did.

20 Q. Now, regarding the night of the incident, did you
21 ask him any questions to see if he could articulate why
22 Meagan would have a reason to make this up?

23 A. I did.

24 Q. And did the defendant give -- well, let me take
25 that back.

1 Did he state that there were no issues with
2 the friendship before that day?

3 A. Yes.

4 Q. And did he admit that Meagan had no ax to grind
5 and as far as he knew, everything was cordial?

6 A. Yes.

7 Q. Did he say that he remembered during one of the
8 incidents at the massages that her son got sick and threw
9 up?

10 A. Yes.

11 Q. Did he recall when Stephen came home the night of
12 that last massage Stephen asking Meagan, Did he touch you
13 and Meagan saying, Yes and then Stephen saying, You've got
14 to go?

15 A. Yes.

16 Q. Okay. He told that to you?

17 A. Yes.

18 Q. Okay. Did he admit initially when you asked him
19 about the pills that he offered something to relax her?

20 A. I did ask him.

21 Q. And --

22 A. He denied it.

23 Q. Okay. He gave you a fairly lengthy comment in
24 his denial of ever giving her anything to relax her;
25 correct?

1 A. Yes.

2 Q. At some point during that call, the interview,
3 did you confront him with the fact that you were present
4 to listen to the call that was made between Meagan and the
5 defendant?

6 A. I did.

7 Q. And did you tell him that, you know, that call
8 was recorded?

9 A. I did.

10 Q. Okay. Before you made -- before you told him all
11 these things, though, did he deny saying that he touched
12 her to bring her pleasure?

13 A. Yes.

14 Q. And did he deny having any conversation with
15 Meagan about touching her?

16 A. Yes, he did.

17 Q. So then you tell him that you are present -- you
18 were present for the call and that he was recorded. And
19 did his story change?

20 A. Yes.

21 MR. SANDO: Objection, Your Honor. It's a
22 whole line of leading questions here. I don't want to
23 jump up and down each time, but --

24 THE COURT: Well, I guess this is the
25 easiest way to do it. Did you ask him this question, was

1 this his answer?

2 MR. SANDO: I agree with that, Your Honor,
3 but she said didn't he tell you this and didn't he tell
4 you that and didn't he corroborate --

5 THE COURT: How about did he tell you this,
6 did he tell you that?

7 MS. LEE: Sure.

8 BY MS. LEE:

9 Q. Did you tell him that the calls were recorded?

10 A. Yes, I did.

11 Q. And did he change his answers once he realized
12 that the calls were recorded?

13 A. Yes.

14 MR. SANDO: Objection, Your Honor. Once he
15 realized, this is total speculation --

16 THE COURT: Did he change his answers during
17 the course of the interview?

18 THE WITNESS: Yes, he did.

19 THE COURT: Okay.

20 BY MS. LEE:

21 Q. So did he admit after you had told him about the
22 confrontation call to giving Meagan Soma?

23 A. Yes. He said that he had given her Soma at one
24 time. He didn't say when he gave it to her, but he said
25 he recalled giving her Soma at one time.

1 Q. And did he tell you what he gave it to her for?

2 A. I believe it was to relax her.

3 Q. Did he admit to giving her Seroquel?

4 A. No.

5 Q. Did you confront him about the statement he made
6 about wanting to bring Meagan pleasure?

7 A. Yes, I did.

8 Q. And then did he respond by saying, Well, she
9 expressed an interest in me?

10 A. Yes, he did.

11 Q. At some point later in the interview did you ask
12 to take his DNA?

13 A. Yes, I did.

14 Q. And did you leave it completely up to him as to
15 whether or not he would submit to providing you with a
16 sample?

17 A. Yes, I did.

18 Q. Did he agree to provide you with a sample by the
19 end of that interview?

20 A. No, he did not.

21 Q. During that interview did you ask him some
22 questions about himself, so meaning not just about Meagan?

23 A. Yes.

24 Q. Did he say to you that he has memory problems?

25 A. Yes, he did.

1 Q. Did he say to you that he's more or less
2 homebound and doesn't have a life?

3 A. Yes, he did.

4 Q. Did he say that he was a self-taught masseuse?

5 A. Yes.

6 Q. Did he say that he had problems at other clubs
7 and had been trespassed because of propositioning other
8 girls and offering his services?

9 A. Yes, he did.

10 Q. Did he tell you that he always runs into bad
11 luck?

12 A. Yes, he did.

13 Q. Did he make a statement, I've always been one of
14 those where, you know, if crap happens, it will happen to
15 me?

16 A. Yes, he did.

17 Q. Now, after you conducted this interview, did you
18 also speak with a man named James Hancox?

19 A. I did.

20 Q. How did that come to be? How did you interview
21 James Hancox?

22 A. I went to the other various clubs in town and
23 spoke to the managers. And at this particular location
24 called Club Venom, I spoke with Mr. Hancox.

25 Q. Was that based in part by -- due to the

1 defendant's statement about being trespassed from these
2 locations?

3 A. Yes.

4 Q. And in speaking with Mr. Hancox, did you learn
5 that another woman had made a similar complaint against
6 the defendant as the one that Meagan had?

7 A. Yes.

8 Q. Did you get a copy of that report that was filed
9 by that woman?

10 A. I did.

11 Q. And that woman, did you come to know what her
12 name is?

13 A. Yes. Her name is Maria Estrella.

14 Q. Did you ever get a chance to speak with
15 Ms. Estrella?

16 A. No, I did not.

17 Q. Okay. But you reviewed her report?

18 A. I did.

19 Q. Did you try to get in touch with Ms. Estrella?

20 A. I did. I made phone calls and left messages at
21 the business for her to call me, and she never responded.

22 MS. LEE: I have no further questions, Your
23 Honor.

24 THE COURT: John, cross-examination?

25 CROSS-EXAMINATION

1 BY MR. SANDO:

2 Q. Ms. Maria Estrella, where did she work?

3 A. She worked at a place called Club Venom.

4 Q. What kind of club is that?

5 A. A gentlemen's club.

6 Q. And how was she employed?

7 MS. LEE: Objection, Your Honor.

8 THE COURT: Overruled.

9 THE WITNESS: I don't know what her
10 employment capacity was.

11 BY MR. SANDO:

12 Q. You didn't know she was a dancer?

13 A. She might have been.

14 Q. You don't know?

15 MS. LEE: Objection, Your Honor. Asked and
16 answered.

17 THE COURT: Sustained.

18 BY MR. SANDO:

19 Q. So she's employed there, but you don't know how?

20 A. Correct.

21 MS. LEE: Objection.

22 THE COURT: Sustained.

23 BY MR. SANDO:

24 Q. When you went to -- when you went to Thomas's
25 house, he told you about his physical disabilities?

1 MS. LEE: Objection, Your Honor. This was
2 based on a pretrial --

3 THE COURT: Yeah, come on up.

4 (The following proceedings held at sidebar.)

5 MR. SANDO: The door has slammed
6 open --

7 THE COURT: No.

8 MR. SANDO: -- because she testified the
9 anxiety medication she was taking is the same thing he was
10 talking about. She can talk about it.

11 THE COURT: Well -- hang on. The only thing
12 that Griffin said.

13 A.

14 MR. SANDO: I can't.

15 THE COURT: You can ask --

16 MR. SANDO: Well, there's also a comment in
17 there that he said he didn't have any drive. That's not
18 impotence. If you have drive not --

19 THE COURT: Yes. I think that's
20 contemplated -- that's contemplated by Judge Griffin's
21 ruling about impotence.

22 MR. SANDO: He says impotence. He didn't
23 say anything about drive.

24 THE COURT: I understand. Nevertheless.

25 MR. SANDO: I can't ask about physical

1 disabilities he told this detective --

2 THE COURT: You can ask him physical
3 disabilities. That is different --

4 MS. LEE: Self-sever hearsay.

5 THE COURT: No, no, no, no. He can ask
6 whatever he wants fill in the blanks.

7 MS. LEE: In I'm sorry.

8 THE COURT: That defendant's statement that
9 what you were asking is -- you can't pick and choose what
10 you want the jury to hear.

11 MS. LEE: Yes.

12 THE COURT: No, no.

13 MS. LEE: Yes, I can --

14 THE COURT: No, you can't. He can fill in
15 the blanks. You asked this witness about somebody that
16 Mr. Yates said about his disability and so forth. That
17 opened the door to his physical issues. And even if you
18 hadn't, it's admissible except for impotence or sex drive.

19 (The following proceedings held in open
20 court.)

21 BY MR. SANDO:

22 Q. During this discussion with Thomas, he described
23 to you various physical disabilities?

24 A. Correct.

25 Q. And do you remember what they were?

1 A. No, I don't recall. I just specifically recall
2 him having the use of a cane. I don't recall. I'd have
3 to look at the transcript to see if he told me exactly
4 what his illness was.

5 Q. Do you remember him saying he suffered from
6 depression, anxiety, had a bad back and a bad leg?

7 A. I do remember bad back and bad leg.

8 Q. And he told you he was on a multitude of
9 prescription drugs?

10 A. Correct.

11 Q. And you went into wherever it was and you got
12 ahold of every one of those prescriptions?

13 A. Yes. He volunteered and he showed us what the
14 medications were.

15 Q. About 12?

16 A. I don't remember the number, sir, but it was
17 quite a few.

18 Q. And you opened it up and went one by one no, no,
19 no. Do you remember doing that?

20 A. Yes.

21 Q. So you knew what you were looking for I guess?

22 A. Yes, sir.

23 Q. And you didn't see any Soma and you didn't see
24 any Seroquel?

25 A. He had Soma, but he did not have Seroquel.

1 Q. Okay. And there was approximately 12 medications
2 he was taking for his various disabilities?

3 A. Like I say, I don't remember the exact number,
4 sir, but he had a lot.

5 Q. So you took these pills and put them into the
6 lab?

7 A. The ones that the officers collected?

8 Q. Right.

9 A. Yes, they were sent to the lab and tested.

10 Q. And you found out that there was no narcotic
11 drugs or toxins in them?

12 A. Correct, sir.

13 Q. For all you know, they could have been sugar
14 pills?

15 A. Yeah. They didn't state what was in them, sir.

16 Q. But the lab said there were no toxic drugs, no
17 narcotics; right?

18 A. Correct.

19 Q. And you said you put your -- you put it I guess,
20 the investigation on the back burner until you got this
21 forensic evidence back?

22 A. Yes, sir.

23 Q. And the forensic evidence you got back was the
24 pills didn't contain Soma or Seroquel and they didn't know
25 what was in it, but it wasn't a narcotic or a toxic drug?

1 A. I don't remember when that report came back. I
2 know it came back separate from the DNA analysis.

3 Q. And the DNA analysis came back and it said what?

4 A. That there was presence of male Y-STR.

5 Q. What else did it say?

6 A. Well, sir, that report did not come back with any
7 DNA. The first DNA analysis report that I got back was in
8 regards to the underwear and Ms. Marlborough's buccal
9 swabs. That was the first DNA analysis report that I sent
10 out.

11 In February of 2013 I had, as you said, put
12 the case on the back burner, closed it pending forensics.

13 In April I got back the first forensic
14 analysis report stating that there was a presence of male
15 Y-STR on the underwear, and I was asked by the crime lab
16 to go out and secure buccal swabs from the defendant and
17 from Mr. Sumner.

18 Q. And the report came back Mr. Yates's DNA is not
19 present, but Stephen Sumner's is?

20 A. Correct, after those buccal swabs were submitted.

21 Q. And by the way, were there any buccal swabs taken
22 of the vagina area?

23 A. No.

24 Q. But you had some information that there was a
25 touching under the underwear?

1 A. Correct, sir.

2 Q. So there might have been DNA on her private
3 areas?

4 A. Yes, but -- yeah.

5 Q. But she was never buccal swabbed for that? Just
6 the panties.

7 A. Right.

8 Q. And the presence of a Y-STR chromosome, do you
9 know what that is?

10 A. No. I'm not an expert in DNA analysis, sir.

11 Q. It's from some other person. Is that right?

12 A. Correct.

13 Q. But we don't know who that other person is, do
14 we?

15 A. At the time when the lab came back, there was a
16 presence of a male Y-STR, and we needed to determine who
17 that was.

18 Q. We don't know -- well, we know it isn't Thomas
19 Yates' Y-STR; right?

20 A. I don't follow your questioning, sir.

21 Q. The Y-STR you're talking about, you don't know
22 what that is. In any event, the Y-STR DNA analysis
23 excluded Thomas Yates?

24 A. In the end, yes.

25 Q. And so there's a presence of another male's DNA

1 in addition to Stephen Sumner's?

2 A. In the report it stated that Mr. Sumner's DNA
3 could not be excluded. That Mr. Yates' DNA was excluded.
4 However, there was a presence of another foreign DNA. But
5 from what I recall, it was too slight to make any kind of
6 determination who it belonged to.

7 Q. In any event, there was no evidence that the
8 Y-STR chromosome belonged to Thomas Yates that you know
9 of?

10 A. Correct.

11 Q. Did you -- did you ask Thomas about the pills he
12 took and why he took them?

13 A. I don't recall, sir.

14 Q. You don't remember?

15 A. Well, there was -- there was various medications,
16 and I don't recall asking him or what he told me they were
17 for. If he did tell me, I'm sure it's in the transcript.

18 Q. But you do remember that he was disabled and he
19 had mental and physical disabilities, and that's why he's
20 taking all these drugs?

21 A. Yes, sir.

22 Q. Now, you interviewed Meagan on October 18, 2012;
23 right?

24 A. Correct.

25 Q. And that's a couple weeks after the incident?

1 A. Yes, sir.

2 Q. And that's after you reviewed
3 Detective Aitchison's report?

4 A. Yes, sir.

5 Q. And the two responding officers that came that
6 night?

7 A. Yes.

8 Q. So you had some questions; right?

9 A. Yes, I did, sir.

10 Q. You asked her about what the position was when
11 Stephen walked in. Is that right?

12 A. What the position was?

13 Q. Yeah.

14 A. Position of whom?

15 Q. The respective positions on that couch.

16 A. Yes.

17 Q. And she told you basically that he was massaging
18 her. She fell asleep. Woke up to him putting his hand
19 under my underwear touching me; right?

20 A. Yes, sir.

21 Q. And you asked how you were dressed. And she
22 said, Wearing a bra and underwear and I had a towel on top
23 of me?

24 A. Yes, sir.

25 Q. By the way, did you ever talk to Officer Altman?

1 A. No, I did not, sir.

2 Q. You saw his report, though, about how Stephen
3 described the fact that she was putting something on her
4 top?

5 A. I don't recall.

6 Q. You don't remember reading that?

7 A. I remember reading it, but I don't recall off the
8 top of my head reading that part.

9 Q. When he's giving this massage, that would include
10 the head, neck, back and legs?

11 A. Correct.

12 Q. And including the inner thigh?

13 A. That's what Mr. Yates said. He was massaging the
14 inner thighs.

15 Q. That would be part of the massage?

16 A. That's what he said that he was massaging.

17 Q. And off limits were as Stephen said breasts, butt
18 and vagina?

19 A. Well, I didn't interview Stephen, so I can't
20 attest to what was off limits.

21 Q. That's what Stephen told you -- I mean that's
22 what Thomas told you; right?

23 MS. LEE: Objection. Hearsay.

24 THE COURT: Overruled.

25 THE WITNESS: I recall Thomas telling us the

1 areas that he focused on. I don't recall him telling me
2 that the breasts, the vaginal area or anything else was
3 off limits. I do remember him talking about how that he
4 did massage her buttocks that night.

5 Q. And when did he tell you that?

6 A. During the interview.

7 Q. During the interview --

8 A. I asked -- when I asked him about the DNA, the
9 presence of DNA, I asked him would there be any of his DNA
10 on her underwear, and he said, Well, maybe on the
11 buttocks. That is in the interview.

12 Q. When was it that he found out that his DNA were
13 not on the panties?

14 A. That was in April of 2000 -- June of 2016 --
15 2013. I'm sorry.

16 Q. When did you take this to the grand jury?

17 A. This was also in June of 2013.

18 Q. So pretty soon after you got back the forensic
19 evidence of the pills not being what Meagan said they were
20 and the panties coming back negative DNA for Thomas Yates,
21 that didn't help your case at all as far as waiting for
22 the forensics, did it?

23 A. It didn't support anything as far as -- his DNA
24 wasn't present and yeah, the pills had nothing in there
25 that contained anything, narcotics.

1 Q. So it didn't corroborate anything that you were
2 looking at really?

3 A. Correct.

4 Q. But you went ahead and took it to the grand jury?

5 A. I took it to the county attorney's office for
6 issuing, and they felt that there was enough for an
7 issuing summons. Then it was taken to the grand jury.

8 Q. Now, I interviewed you; correct?

9 A. Yes, you did.

10 Q. Back in sometime in March?

11 A. I'm sorry, sir. What was that?

12 Q. Sometime in March?

13 A. Of this year, yes.

14 Q. And you said you had read Aitchison's report?

15 A. Yes.

16 Q. I asked you in that interview -- you said that
17 she reported there was a total of four massages; right?

18 A. Yes, sir.

19 Q. One of them was done at her place of employment,
20 but the last two were done at her residence?

21 A. Yes, sir.

22 Q. Did you hear her testify?

23 A. Yes, I did.

24 Q. Did you hear her testify all massages were at her
25 house, her apartment?

1 A. She did say they were all at her house. In
2 cross -- in redirect with the prosecutor, she did state
3 that there was one at work involving the legs only.

4 Q. Did she say when that occurred?

5 A. During my interview with her, she stated that
6 that happened while she was still employed at Raiders Reef
7 shortly after she met Mr. Yates.

8 Q. Did you ask -- do you remember me asking -- do
9 you remember Detective Aitchison saying that she had five
10 massages?

11 A. Did you --

12 Q. Do you remember me asking you that?

13 A. Yes.

14 Q. Do you remember you saying, I do?

15 A. I --

16 Q. Do you have your --

17 A. No, I don't have anything on here, no, sir.

18 MS. LEE: Your Honor, I'm going to object.
19 Improper impeachment.

20 THE COURT: Overruled.

21 BY MR. SANDO:

22 Q. I'll show you what's been marked as Defendant's
23 Exhibit C. Does this look like a transcript? You can
24 take your time to verify it.

25 MR. SANDO: I'm sorry. I didn't ask to

1 approach the witness, Your Honor.

2 THE WITNESS: Yes, sir, this is a transcript
3 from my interview with you dated March 13, 2014.

4 BY MR. SANDO:

5 Q. Could you turn to page 3.

6 A. Okay.

7 Q. Midway, 16. Do you see this?

8 A. Yes.

9 Q. Do you remember Detective Aitchison saying, She
10 said five massages and you saying, I do?

11 A. Yes.

12 Q. And do you remember saying in relation to the
13 question, The first and second one she --

14 MS. LEE: Objection, Your Honor. May we
15 approach?

16 THE COURT: Sure.

17 (The following proceedings held at sidebar.)

18 MS. LEE: I believe counsel is trying to
19 impeach Meagan's statements that she made to Aitchison
20 through Detective Dobell. I don't think that is proper.
21 I think Detective Aitchison should be called to impeach
22 Meagan.

23 MR. SANDO: He will.

24 MS. LEE: Because he's referring to
25 Aitchison's report, but he didn't -- she didn't

1 specifically make those statements to him.

2 MR. SANDO: I'm asking if he remembers
3 seeing that in the report. Aitchison wrote the report.

4 THE COURT: All right. Move on.

5 (The following proceedings held in open
6 court.)

7 BY MR. SANDO:

8 Q. Do you remember her telling you that the first
9 massage she fell asleep?

10 A. Yes, sir. Well, the first massage at her home.

11 Q. Okay. At her home. Do you remember when I asked
12 you on page 4 there when you were asked about a platonic
13 relationship, and I asked you, Stephen would be there
14 sometimes and sometimes wasn't?

15 And you said, He was there for one massage,
16 which was the second one at the house.

17 A. Correct.

18 Q. But you just said the first one was at the house?

19 A. No. I said the first massage at her house she
20 fell asleep.

21 Q. Okay.

22 A. It was the second massage at her house is when
23 Stephen was present.

24 Q. And that's when they watched the movie. Is that
25 right?

1 A. Are you asking me did they watch a movie during
2 that second massage?

3 Q. Yes.

4 A. That's not the way I understood it. That
5 Mr. Yates came over on a separate occasion and they
6 watched movies.

7 Q. If you turn to page 4 --

8 A. I'm there.

9 Q. -- at page -- line 31. Stephen was there for
10 one massage, which is the second one at the house. He was
11 present when they watched the movie.

12 A. That's two separate incidents, sir. According to
13 my interview with Ms. Marlborough, it was -- she made it
14 as the massages. And then when Mr. Yates came over to
15 watch the movies were different times.

16 But Stephen was present during the second
17 massage and he was also present when they watched the
18 movies. Those were two separate incidents.

19 Q. Well, on page 4 it says, He was there for one
20 massage, which was the second one at the house. He was
21 present when they watched a movie. That would be for the
22 second massage. Does it say that?

23 A. Hold on a second, sir.

24 Q. Page 4, lines 31 through 32.

25 A. If you look at line 29, sir, you asked me, And

1 Stephen would sometimes be there and sometimes wasn't?
2 And I said, Yes. He was there for one massage, which was
3 the second one in the house, and he was present when they
4 watched the movie.

5 Q. That's not the same time?

6 A. No.

7 Q. Oh. It doesn't appear that -- it's -- it
8 sounds -- doesn't it sound like this is the second time,
9 he was present when they watched the movie?

10 MS. LEE: Objection. Asked and answered,
11 Your Honor.

12 THE COURT: Sustained.

13 BY MR. SANDO:

14 Q. The page before, you did say the first massage
15 was at her home and she fell asleep?

16 MS. LEE: Objection. Asked and answered.

17 THE COURT: Sustained.

18 BY MR. SANDO:

19 Q. Do you remember saying then the third one she had
20 fallen asleep?

21 A. The third massage at her house, yes, sir.

22 Q. And the last one, that would be the fourth?

23 A. Well, obviously there was a misunderstanding as
24 far as how many there were at the home. The last massage
25 the night of the incident that she -- the allegation is

1 she was inappropriately touched, she fell asleep.

2 Q. Right. But according to this transcript, she
3 fell asleep at the third one, which would have been the
4 next to the last one where she fell asleep?

5 A. What line are you on, sir? What page?

6 Q. Page 3 starting at line 23 to 25.

7 A. Yes.

8 Q. So according to this, she fell asleep the last
9 two massages. Is that right?

10 A. On line 23, the first massage at her home she had
11 fallen asleep. The second one there's no mention of
12 falling asleep. It was the first and then the third one
13 that she had fallen sleep.

14 Q. So there's four massages?

15 A. That has been determined through testimony, yes,
16 that there were four massages at home.

17 Q. And she fell asleep at that last one?

18 A. The very last one, yes.

19 Q. Well, it appears that then she fell asleep the
20 first, third and fourth massage according to page 3. Is
21 that right?

22 THE COURT: Did she think that the third one
23 was the last one when they did this interview?

24 THE WITNESS: Yes, sir.

25 THE COURT: Okay. Move on.

1 BY MR. SANDO:

2 Q. So you were confused?

3 A. When I spoke to Ms. Marlborough and I interviewed
4 her on October 18th, it was presented to me that there was
5 a total of three massages at her home. And it was the
6 first one and the third one that she had fallen asleep.

7 Q. And Stephen was there for the second one?

8 A. Yes, sir.

9 Q. And I guess it would be the third one too when
10 they watched the movie?

11 A. Sir, you've asked that question. And, again,
12 from my interview with Ms. Marlborough, I came to the
13 understanding that Mr. Yates coming over watching the
14 movies was an entirely separate night from the massages.

15 Q. Well, if you look at page 4 --

16 MS. LEE: Objection. Asked and answered.

17 THE COURT: I don't know what the question
18 is. I don't know what's on page 4.

19 BY MR. SANDO:

20 Q. On one occasion he came over and they watched a
21 movie. Is that right?

22 MS. LEE: Objection. Asked and answered.

23 THE COURT: Sustained.

24 BY MR. SANDO:

25 Q. Now, you -- when you were given this interview,

1 you were asked a question, and you said that the -- these
2 massages were not sexual in nature. Is that right?

3 A. Which interview was that, sir?

4 Q. Page 5.

5 A. Which line are you referring to, sir?

6 Q. 4 through 7 -- actually 4 through 11. That it
7 was -- these were strictly massage. Number 11.

8 THE COURT: Hold on a second. I don't know
9 what you're asking him in the interview. Is this what
10 Meagan reported? Is this what his opinion is? Is this
11 what Mr. Yates said? I mean who are we talking about,
12 when and so forth?

13 MR. SANDO: Your Honor, can we approach?

14 THE COURT: Yes.

15 (The following proceedings held at sidebar.)

16 MR. SANDO: I can. I didn't want to ask
17 that. I asked if he strictly --

18 THE COURT: That's not relevant.

19 MR. SANDO: It was for him.

20 THE COURT: I don't care what you
21 understood. It's not relevant.

22 (The following proceedings held in open
23 court.)

24 BY MR. SANDO:

25 Q. Do you remember me asking you about their

1 respective positions on the couch?

2 A. Do you have a page and line, sir?

3 Q. It's page 10 at the bottom.

4 A. Okay, I'm on page 10.

5 Q. Okay. And earlier I asked if he denied sticking
6 his thumb in her mouth and hand in her panties, and you
7 said he denied that. And then I asked you -- she said
8 that Yates was lying on his left side with his left thumb
9 in her mouth and his right hand inside her underwear.

10 A. Okay.

11 Q. And you said correct; right?

12 A. Hold on.

13 Q. And then I asked you some other questions about
14 the left right here.

15 A. Sir --

16 Q. If you could turn to page 11.

17 MS. LEE: Your Honor, the witness may be
18 able to answer.

19 THE COURT: He answered. I think he had
20 something to add, but there's no question before him right
21 now.

22 BY MR. SANDO:

23 Q. Do you remember me asking you, So it would be the
24 left side, and he had his hand under her head or shoulder
25 and stuck his thumb in like that?

1 A. Okay. You're asking me now on page 11 at the
2 top. You asked me, So it would be the left side. Okay.
3 And my response was, She didn't say how his left arm was
4 behind her. She said she woke up, and his left thumb was
5 in her mouth and his right hand was inside her underwear.

6 Q. So his left -- oh, you have it behind her. So he
7 was -- had his arm around her neck; right?

8 THE COURT: Sustained. The witness said
9 what the witness said. It's not up to him to determine
10 how this all occurred. The jury has heard what the
11 alleged victim said and --

12 MR. SANDO: Okay.

13 THE COURT: -- you just reiterated it.

14 BY MR. SANDO:

15 Q. You said the left arm was behind her --

16 MS. LEE: Objection, Your Honor.

17 THE COURT: Sustained. Sustained. Beat
18 another dead horse, John.

19 BY MR. SANDO:

20 Q. Okay. Let me go on then. Yates was lying on a
21 bed along her right side. Is that what -- do you remember
22 me asking that question?

23 MS. LEE: Objection.

24 MR. SANDO: No. I'm asking how
25 Yates -- Thomas was lying, not her.

1 MS. LEE: Based on whose statement?

2 MR. SANDO: If you turn to page 11 starting
3 there at line 13.

4 THE COURT: Read it to yourself.

5 BY MR. SANDO:

6 Q. Are you with me?

7 A. Yes.

8 Q. Yates was lying on -- my question, Yates was
9 lying on the bed along her right side, and he's lying on
10 his left side with his left thumb in her mouth?

11 A. Yes.

12 Q. And then when I -- further down the page there
13 when we were describing this between the two of us, the
14 configuration, I asked -- or you stated that Yates was
15 lying on his left side with his left thumb in her mouth
16 and he was lying on her -- on her right side, which would
17 make sense. If she's lying -- this would be my right
18 side. He's over on this side lying on the left side
19 facing her?

20 A. Yes, sir.

21 Q. So according to this, he's facing her. Is that
22 right?

23 MS. LEE: Your Honor --

24 THE WITNESS: Yes, according to --

25 THE COURT: Excuse me. According to what?

1 BY MR. SANDO: Okay.

2 THE COURT: According to what she said,
3 according to what he thinks, according to what? This
4 isn't helping anybody.

5 BY MR. SANDO:

6 Q. On page 11 on line 31 I'm asking you about the
7 description in your report, the second page. And we were
8 talking about left, right side. And you
9 said --

10 MS. LEE: Objection.

11 BY MR. SANDO:

12 Q. -- he'd be facing her, is that right, on line
13 31?

14 A. Yeah.

15 MS. LEE: Objection. If defense counsel
16 would just have the witness refresh his recollection and
17 then ask him a question regarding that portion, I think it
18 would be a lot clearer.

19 MR. SANDO: I thought I was doing that.

20 MS. LEE: Instead of reading from the
21 transcript.

22 MR. SANDO: I can read from the transcripts
23 and ask him whether he made the statement or not.

24 THE COURT: Well, generally what we do is we
25 ask, Did you make this statement, did you make a statement

1 concerning.

2 BY MR. SANDO: Right.

3 THE COURT: If he says no, then you can read
4 from the transcript. Otherwise --

5 MR. SANDO: That's what I was trying to do.

6 THE COURT: Just ask a question. Did you
7 say here that he was facing her?

8 THE WITNESS: Yes, I did, sir.

9 THE COURT: And again, this conversation
10 that you were having with the detective I presume is based
11 on what you believe his interview with Meagan disclosed?

12 MR. SANDO: Yes, that's correct.

13 THE COURT: That wasn't necessarily clear to
14 the Court.

15 BY MR. SANDO:

16 Q. The prosecutor asked you here, Did you talk to
17 Maria Estrella and were their stories similar? That being
18 similar to Meagan Marlborough. Do you remember that?

19 A. Yes, I do, sir.

20 Q. And you said yes?

21 A. Yes.

22 Q. Did Maria ever allege any touching of her private
23 parts?

24 MS. LEE: Objection. Foundation.

25 THE COURT: Overruled.

1 THE WITNESS: I never talked to
2 Ms. Estrella.

3 BY MR. SANDO:

4 Q. Okay. You read a report?

5 A. Yes, I did.

6 Q. And you've had time to review it since then?

7 A. No. But I recall in the report there was nothing
8 in there about an allegation of being touched.

9 Q. Right. But in Meagan Marlborough's, that's why
10 we're here because she's alleging he touched her; right?

11 MS. LEE: Objection.

12 THE COURT: Sustained.

13 BY MR. SANDO:

14 Q. Were there any other differences between their
15 stories?

16 A. Whose stories now, sir?

17 Q. Maria Estrella and Meagan Marlborough.

18 MS. LEE: Objection. Foundation.

19 THE COURT: Sustained.

20 BY MR. SANDO:

21 Q. You recall saying that there were similarities
22 between Maria Estrella and Meagan Marlborough's
23 statements -- claims; correct?

24 A. On the massages, yeah.

25 Q. But there were differences too?

1 A. Yes.

2 Q. Specifically there was no touching?

3 A. Correct.

4 Q. And furthermore, there wasn't a long-term
5 relationship with Maria Estrella?

6 MS. LEE: Objection. Foundation.

7 THE COURT: Sustained.

8 BY MR. SANDO:

9 Q. Well, you read her report. Is that right?

10 A. Yes.

11 Q. Did she ever say that he came over to her house?

12 MS. LEE: Objection.

13 THE COURT: Sustained.

14 She's going to testify, John. Ask her.

15 BY MR. SANDO: Well, I just want to know if
16 he read the report.

17 THE COURT: Well, he said he read the
18 report, but what the report says is hearsay.

19 BY MR. SANDO:

20 Q. You earlier said that confrontation calls are
21 made in cases where you have limited forensic evidence.
22 Is that right?

23 A. Correct.

24 Q. But in this case you took swabs for DNA of her
25 panties?

1 A. I'm sorry?

2 Q. You took DNA -- you put her panties into evidence
3 and there was a DNA analysis of it?

4 A. I did not submit her panties into evidence, sir,
5 but yes, there was an analysis of DNA done on the panties.

6 Q. And that's forensic evidence?

7 A. Correct.

8 Q. But you didn't take any swabs of her pubic area?

9 A. Sir, when it comes to collecting any kind of DNA
10 from the vaginal area, okay, this incident occurred on the
11 early morning hours of 5 October, 2012. DNA in the
12 vaginal vault is good for up to 120 hours. After that,
13 the presence of any DNA is very unlikely.

14 Now, the night of the incident when the
15 officers and detectives went out there, Ms. Marlborough
16 did not participate in any kind of what we call a SAR exam
17 or a sex assault exam done at the TMC Hospital.

18 By the time I reached Ms. Marlborough, which
19 would have been on the 18th and even with the case being
20 assigned to me on the 11th of October, we were beyond that
21 120 hours of being able to recover any DNA that would have
22 been inside the vaginal vault.

23 And any DNA that would have been on the
24 outside whether it be the labia minora or the labia majora
25 or the vulva or anything outside of the vaginal vault,

1 that would have dissipated and been gone because
2 Ms. Marlborough would have showered and bathed and washed
3 that area. So you would not be able to collect any DNA.

4 Q. I understand all that, but that doesn't answer my
5 question. There were no swabs taken of her pubic area
6 period; correct?

7 A. Correct.

8 Q. And where did you get that 120 hours?

9 A. That we got from our crime lab as the -- that's
10 what they operate under.

11 Q. I thought you said you didn't know much about
12 DNA.

13 A. I'm not a DNA expert when it comes to all the
14 numbers and facts and figures and stuff and how it's
15 computed. But that's what we operate on is a 120-hour
16 basis that's handed down to us.

17 When we go -- we have victims and we go to
18 collect DNA, you know, that's one of the questions that we
19 ask is we determine when the assault happened and are we
20 within that 120-hour window so that DNA can be effectively
21 collected and can be analyzed by our crime lab. That does
22 not make me an expert, sir.

23 Q. No, I know. So you would -- then Nora Rankin
24 would agree with you about that, wouldn't she?

25 A. That is what -- that's the policy that --

1 Q. That's not my question. Nora Rankin would agree
2 with you, wouldn't she?

3 MS. LEE: Objection. Speculation.

4 THE COURT: Sustained.

5 BY MR. SANDO:

6 Q. So that gives you five days to examine the pubic
7 area, 120 hours. Is that right?

8 A. Not the pubic area, sir. I said --

9 MS. LEE: Objection. Just not relevant to
10 the facts of this case because the allegation --

11 THE COURT: I understand what the
12 allegations are. Overruled.

13 BY MR. SANDO:

14 Q. According to you, there at least in the vaginal
15 vault, they had five days that you -- that DNA remains
16 there?

17 A. Inside the vaginal vault, yes, sir.

18 Q. And how long --

19 THE COURT: If the victim doesn't allege any
20 penetration of her vulva, is there any basis upon which
21 you would want to collect DNA from the vaginal vault?

22 THE WITNESS: No. It would be any kind of
23 nurse would take swabs of the outer -- outside the vaginal
24 area.

25 THE COURT: And you've explained about time

1 limitations on that.

2 THE WITNESS: Correct. And that would be
3 explained to the nurse what areas to concentrate on as far
4 as collecting.

5 THE COURT: Go ahead. Ask another question.

6 BY MR. SANDO:

7 Q. There was no DNA taken from outside the vault
8 here --

9 A. Yes.

10 Q. -- the pubic bone; right?

11 A. Yes, sir. It was not collected.

12 Q. And you knew that she was claiming that he put
13 his hand -- rubbed her that area?

14 A. Yes, sir.

15 Q. So you had all the possible forensic evidence you
16 wanted after the DNA analysis came back. Is that right?

17 A. Correct. We added the buccal swabs that we
18 needed and had everything collected.

19 Q. And that's when you went to the county attorney,
20 after getting this forensic evidence?

21 A. Yes, sir.

22 BY MR. SANDO: One moment, Your Honor.

23 I think that's all I have, Your Honor.

24 THE COURT: Redirect?

25 We'll take a break right after the redirect.

REDIRECT EXAMINATION

BY MS. LEE:

Q. Detective, when were you assigned to investigate this case?

A. October 11th of 2012.

Q. That's about a week after the incident occurred. Is that correct?

A. Yes, ma'am.

Q. If there were a law enforcement officer who would have or should have or could have taken DNA off of Ms. Meagan Marlborough's body, would it have been you in this case?

A. No, because we were beyond that timeframe. Any DNA that should be collected from her vaginal area should have been done that night of the incident.

Q. So there was nothing you could have done about that?

A. No.

MR. SANDO: Objection, Your Honor. This is leading questions.

THE COURT: Overruled.

BY MS. LEE:

Q. I just have a few more questions for you. I want

1 to clarify there is a lot of questioning about Y-STR
2 results. There was a Y-STR male profile that was found on
3 Meagan's underwear. Do you recall that questioning?

4 A. Yes, ma'am.

5 Q. And that was in February?

6 A. The evidence --

7 Q. I'm sorry.

8 A. I think it was in April. I got the initial
9 report back from the crime lab specifying there was the
10 presence of a male Y-STR.

11 Q. So you closed your file for lack of a better word
12 pending forensics. Then you get the results that there's
13 a Y-STR profile. And then were you told to go and get
14 buccals of both Mr. Sumner and the defendant?

15 A. Yes.

16 Q. Okay. So then you do that. And then there's
17 further analysis to compare those buccals to the Y-STR.
18 Is that correct?

19 A. Correct.

20 Q. Before all of this happened, that was when you,
21 quote, closed for further -- closed pending forensics back
22 in February?

23 A. Yes.

24 Q. Okay. Just wanted to clarify.

25 You've done a lot of detective cases where

1 there's touching on the outside of body. Is that fair to
2 say?

3 A. Yes.

4 Q. And if you can -- I don't know if you can answer
5 this question -- but is it often that you find DNA
6 evidence on these types of cases?

7 THE COURT: Be more specific.

8 MS. LEE: Okay.

9 THE COURT: If it's only -- if the
10 allegation is only that a person was touched with another
11 person's hand, is it often that you are able to collect
12 DNA from the offended person's body?

13 THE WITNESS: I think I'm confused. Are you
14 asking --

15 BY MS. LEE:

16 Q. You know what, I'm going to ask -- can I ask it
17 in a different way?

18 THE COURT: Sure. Go ahead and try. We
19 haven't been successful so far.

20 BY MS. LEE:

21 Q. Because, you know, this case is unique because
22 you weren't the one who could have taken swabs, so I
23 understand that because you were not there that night.
24 You were assigned later.

25 A. Right.

1 Q. So let me ask it in a different way. Is it
2 uncommon for DNA results to come back as inconclusive? Is
3 it uncommon?

4 MR. SANDO: Objection, Your Honor.
5 Foundation. He's not qualified to answer. That's a
6 question for Nora Rankin.

7 THE COURT: Well, you've opened this. I
8 mean you've asked him all kinds of questions about his DNA
9 knowledge. If he knows, he may answer. Overruled.

10 THE WITNESS: I can tell you that I have
11 submitted evidence that's been collected, SAR exams,
12 swabs, clothing, et cetera for DNA analysis. And I have
13 had reports come back there not being a presence of DNA.
14 You goes back and it's just the victim's. There isn't or
15 that there wasn't enough DNA detected to be able to --

16 Q. Make a match?

17 A. -- make an identification.

18 Q. And you're only testifying to the cases where you
19 actually had the ability or the role of collecting and
20 getting those swabs taken from the victim. Is that
21 correct?

22 A. Correct.

23 Q. Okay. And that's not this case?

24 A. Correct.

25 Q. Now, you don't have DNA, but you do have the

1 confrontation call?

2 A. Yes.

3 Q. And have you --

4 MR. SANDO: Objection, Your Honor. It
5 assumes that the confrontation call is some kind of
6 forensic evidence or evidence against --

7 THE COURT: She's not asking about forensic
8 evidence now. This is a whole different question.

9 MR. SANDO: She was asking the confrontation
10 call as if it is --

11 THE COURT: Overruled.

12 BY MS. LEE:

13 Q. Have you in your experience in your caseload had
14 cases that -- actually that's a bad question, so I'm just
15 going to move on.

16 You were asked some questions about Maria
17 Estrella by the defense attorney about the type of
18 allegations that she made.

19 A. Correct.

20 Q. And you said that there were differences. And I
21 wanted to give you the opportunity to tell us what the
22 similarities were.

23 A. I'd have to look at her report again.

24 Q. I can walk you through it.

25 A. Okay.

1 Q. Did she mention that the defendant offered her
2 pills?

3 A. Yes.

4 Q. Did she mention that the defendant had offered
5 her free massages?

6 A. Yes.

7 Q. Did she say that there were also sexual comments
8 made in conjunction with that offer?

9 A. Yes.

10 MS. LEE: I have no further questions.

11 THE COURT: Jurors, anything?

12 (The following proceedings held at sidebar.)

13 MR. SANDO: What's that word?

14 THE COURT: I don't know about this. This
15 one I don't know if he knows. We're on number 2.

16 MR. SANDO: I don't have a problem.

17 THE COURT: Can you believe that question?
18 I'm not opening up a can of worms. Number 3 won't be
19 asked. Is everything else okay?

20 What about part A of number 2?

21 MS. LEE: I'm okay with the question.

22 MR. SANDO: The door is wide open.

23 (The following proceedings held in open
24 court.)

25 THE COURT: Detective, so there's a

1 difference between night detectives and day detectives.
2 Night detectives work sort of a graveyard shift. Is that
3 right?

4 THE WITNESS: Yes, sir.

5 THE COURT: And so if something occurs
6 during that period of time, a sergeant or someone will
7 call a night detective. Oftentimes they're at home. And
8 they say, Come on out. We have a situation you need to
9 investigate. Is that correct?

10 THE WITNESS: No, sir. The way it works is
11 that our night detectives, they work from 6:00 p.m. to
12 4:00 a.m., and they are actually at the main TPD station
13 on Stone Avenue. That's where they work out of. They're
14 there seven nights a week.

15 And what happens is let's say, for example,
16 we have a robbery that just occurred at 7-Eleven.
17 Officers are going to go out there. They'll be the
18 initial responders.

19 They take the report, find out who, what,
20 where, when, why. Then they're going to make a
21 determination that they need a -- they need a detective to
22 come out and follow up and start working this and go in
23 after -- take on the case for the rest of investigation.

24 So the officer or his supervisor is going to
25 call the night detective's supervisor who's a sergeant

1 who's on duty as well. And they'll call him and say, Hey,
2 we got this robbery at 7-Eleven at ABC Street, and we need
3 you guys to come out and pick up the investigation. Then
4 the night detectives will go out.

5 THE COURT: But night detectives have often
6 been in other roles in the Tucson Police Department during
7 their tenure as a police officer; right?

8 THE WITNESS: Yes. Some --

9 THE COURT: Hang on. So a night detective
10 theoretically could have been in the sexual assault unit
11 for five years before he or she became a night detective;
12 right?

13 THE WITNESS: Correct.

14 THE COURT: So the question then is are
15 night detectives similarly trained as what I'm referring
16 to day detectives?

17 THE WITNESS: Yes, they are.

18 THE COURT: Did you go to the apartment at
19 all?

20 THE WITNESS: When I first made contact with
21 Ms. Marlborough, I went out to the apartment and I did the
22 interview on October 18th.

23 THE COURT: Okay.

24 THE WITNESS: And then I went back again on
25 I believe it was the 23rd of October when we did the

1 confrontation call.

2 THE COURT: All right. So was this a corner
3 apartment, do you remember?

4 THE WITNESS: No, it was on the first floor.
5 It was an interior apartment. I think it was a couple in
6 from --

7 THE COURT: Was -- there was a window next
8 to the front door; right?

9 THE WITNESS: I don't recall, sir.

10 THE COURT: Okay. Do you remember whether
11 or not there was a window facing the walkway where one
12 would walk up to the front door?

13 THE WITNESS: Let's say you walk in. The
14 apartment is on my left. The doorway as we walked in, we
15 would have to walk in -- there's like a little -- an
16 alcove or an entryway because in that entryway --

17 THE COURT: You don't remember?

18 THE WITNESS: I'm sorry. I --

19 THE COURT: Any other questions from the
20 jurors?

21 Any follow-up, Deborah?

22 MS. LEE: No.

23 THE COURT: John, any follow-up. No?

24 Okay. Thanks, Detective. Go ahead and sit
25 down.

1 We're going to take a break now about 15 or
2 20 minutes. I think the State has another witness -- I
3 know the State has another witness available this
4 afternoon.

5 Remember the admonition. Don't talk about
6 the case. I'll see you back at about just short of 3:00.
7 And I think that'll be the last witness for today.

8 (The jury exited the courtroom.)

9 THE COURT: Show the absence of the jury.

10 One, Deborah, the reason -- I mean frankly I
11 would have wanted Nora Rankin here this afternoon too.
12 But because the defense expected you to call her and then
13 you changed your mind and Josh was going to do the
14 cross-examination of her and Josh has this other
15 commitment that he has to make, that's why.

16 Otherwise I would agree with you, let's get
17 as many witnesses on especially the way I am, very
18 impatient as you might have gleaned.

19 MS. LEE: I understand, Your Honor.

20 MR. SANDO: I have Officer Frank available.
21 He should be here about now.

22 THE COURT: Okay.

23 MR. SANDO: I don't know if you want to take
24 him after Maria Estrella.

25 THE COURT: Well, he'll be real short;

1 right?

2 MR. SANDO: Right.

3 THE COURT: So do you want to do that and
4 then we'll do Maria?

5 MS. LEE: She has a child, and I don't know
6 if she has --

7 THE COURT: Okay. Well, you check it out.
8 Check it out and just let me know.

9 MS. LEE: Okay.

10 THE COURT: And then the second thing is
11 I've mentioned to both of you that I don't -- how shall I
12 put this? I don't approve of speaking objections and I
13 don't approve of counsel arguing with the Court either
14 once I've made a ruling. So a word to the wise. Okay?
15 Thanks.

16 MS. LEE: Thank you, Your Honor.

17 (Court in recess.)

18 THE COURT: Jake's not here. We're on the
19 record. 20132921. Mr. Yates is here, counsel. Jury is
20 absent.

21 Before you ask what you -- Deborah, with
22 regard to our conversation at the bench about whether or
23 not Mr. Sando could bring in certain statements that the
24 defendant made when he was being interviewed by the
25 detective, and you objected and said they were

1 self-serving hearsay, I -- I understand your point, and so
2 let me give you just a stupid example.

3 If you said, Were you -- did he indicate
4 that the defendant was wearing blue pants at the time of
5 the armed robbery? Yes. And then Sando says, Well,
6 didn't he also tell you that he loves his mother and he
7 goes to her house on Easter every year? That objection is
8 sustained.

9 But Rule 106, if a party introduces all or
10 part of a writing or recorded statement, an adverse party
11 may require the introduction at that time of any other
12 part or any other writing or recorded statement that in
13 fairness ought to be considered at the same time.

14 So that was my position. That if as an
15 example his disability came up in direct, then John gets
16 to ask what disability with the exception of what Judge
17 Griffin precluded.

18 So -- and you know, right or wrong, most of
19 us judges take the position that if the State introduces a
20 defendant's statement, that the jury gets to hear pretty
21 much the whole thing.

22 And that may not be correct, but that's the
23 culture anyway. That's what -- so anyway, that's the
24 basis so that you understand where I was coming from. And
25 I understand where you were.

1 Okay. Now, what did you have in mind?

2 MS. LEE: I just -- and I might be
3 remembering this incorrectly, Your Honor, but I believe
4 that Your Honor had precluded mention of the profession of
5 both of my victims as being dancers at nightclubs
6 because --

7 THE COURT: I was trying to think of that,
8 and I couldn't remember if it was just as to Meagan or if
9 it was as to Ms. Estrella as well.

10 MR. SANDO: It was just for Meagan.

11 MS. LEE: Well --

12 THE COURT: Well, I know that would be what
13 you remember.

14 MR. SANDO: We met -- that's -- we talked
15 about this the first day they met --

16 THE COURT: Let Deborah finish.

17 MS. LEE: Detective Dobell and I have the
18 same memory, that it was that there's no mention of any
19 profession regarding the women. And that was how I had
20 phrased my motion when I made it.

21 But in the event that Your Honor had only
22 intended to have it apply to Meagan Marlborough, I'm going
23 to raise it right now and ask that that be precluded
24 because of the fact -- well, first of all, like I said,
25 I'm concerned based on the statements that defense counsel

1 made during opening statement.

2 I think that, you know, it's very easy for a
3 jury to be led to believe that, you know, dancers of these
4 types will, you know, act a certain way or, you know,
5 they've asked for it or whatever those implications may
6 be.

7 It's just not necessary for the jury to know
8 that. They will know that she worked there. They will
9 know, you know, that he propositioned her. And I think
10 that that is, you know, the extent that the jury needs to
11 know. And I'm raising this now because on
12 cross-examination of Dr. Dobell --

13 THE COURT: Dr. Dobell?

14 MS. LEE: I'm sorry. Detective Dobell when
15 he was being cross-examined, Mr. Sando made a remark he
16 didn't know she was a dancer. And I mean I think -- I'm
17 concerned.

18 THE COURT: All right. So, John, I
19 understand it's the same argument you made with regard to
20 Ms. Marlborough.

21 MR. SANDO: Right. There's a ruling no
22 prostitution. I haven't gotten into that.

23 THE COURT: Right.

24 BY MR. SANDO: You -- she at the last minute
25 said, Now I don't want to get into the fact they're

1 dancers or strippers. And you said, Okay. You can't ask
2 Meagan about that.

3 But this is completely different. He goes
4 there several times a week at 11:00. And he knows all the
5 girls in there. And he give massages to all these girls
6 including the offering to Maria Estrella. You can't take
7 that out of context where he met them, what he was doing
8 and giving massages to all the girls
9 and --

10 THE COURT: That's fine. Deborah is not
11 saying you can't do that. What Deborah is saying is that
12 it's not relevant that she was a dancer there. That she's
13 employed there, that he gives all the girls massages, all
14 that stuff is just fine.

15 MR. SANDO: So you just want me to say girls
16 instead of dancers?

17 MS. LEE: Employees.

18 THE COURT: Employees.

19 MR. SANDO: Girls.

20 THE COURT: Well, even -- you can even -- as
21 far as I'm concerned, you can even say did you -- well, I
22 don't know who's going to testify. But you can ask Maria,
23 Did he give some of the dancers massages?

24 BY MR. SANDO: Yeah. Okay.

25 THE COURT: Don't ask her what she did

1 there.

2 BY MR. SANDO: All right.

3 THE COURT: Okay? So that's good. And, you
4 know, I mean if this jury doesn't know that the girls that
5 worked at these places were most likely dancers, then
6 they're really not paying much attention. It's not -- I
7 mean I don't think it's any big secret. But let's do
8 that. Okay, John, you got it?

9 MR. SANDO: Got it.

10 THE COURT: Okay.

11 MS. LEE: Can I have just a minute to let
12 the witnesses know?

13 THE COURT: Sure.

14 THE BAILIFF: Jury entering.

15 (The jury entered the courtroom.)

16 THE COURT: We're back on the record.

17 20132921. Mr. Yates is present, counsel.

18 Sit down, everybody. The jury is all
19 present.

20 Mr. Sando is going to call -- oh, wait, this
21 is out of order again because he's available and it's a
22 brief witness. And then we'll go back to the State's case
23 again.

24 John.

25 MR. SANDO: Call Officer Frank, Your Honor,

1 Tucson Police Department.

2

3

KYLE FRANK

4

The witness, after being sworn, testified as follows:

5

DIRECT EXAMINATION

6

BY MR. SANDO:

7

Q. Would you state your name and occupation, please.

8

A. Yes, sir. Officer Kyle Frank. K-y-l-e,

9

F-r-a-n-k. I'm a police officer employed by the City of

10

Tucson.

11

Q. How long have you been so employed?

12

A. I was hired in October of 2007 by the police

13

department, sir.

14

Q. So about six, seven years?

15

A. Yes, sir, going on seven.

16

Q. And what are you assigned to?

17

A. I'm assigned as a patrol officer in operations

18

division midtown.

19

Q. And what does that entail?

20

A. Patrol duties. Taking calls for service.

21

Traffic control. Community policing. Basically I work in

22

the middle of the city.

23

Q. And specifically do you remember October 5th of

24

2012 having a call?

25

A. Yes, sir.

1 Q. And was that a call from Meagan Marlborough?

2 A. Yes, sir.

3 Q. Were you the first officer to respond?

4 A. I was.

5 Q. And who was the second one? Officer Altman?

6 A. More than likely, yes, sir.

7 Q. And what's your -- what are your duties when you
8 arrive at a scene before it goes over to the detectives?

9 A. In a scene like this I speak with the victims,
10 witness, suspects, anybody who was there. Get statements.
11 Determine to the best of my ability what had occurred.

12 Q. And you spoke to Meagan first; right?

13 A. Yes, sir, I believe so.

14 Q. And she told you that she had known Thomas for
15 about six months?

16 A. I don't recall without looking in my report. I
17 don't have any independent recollection.

18 THE COURT: This will be Defense what, Jake?

19 THE CLERK: E.

20 THE COURT: Defense Exhibit E.

21 BY MR. SANDO: May I approach?

22 THE COURT: Uh-huh.

23 BY MR. SANDO:

24 Q. Reference your report, does that appear to be a
25 copy of your report?

1 A. Yes, sir, this is.

2 Q. It's a pretty short report; right?

3 A. Relatively, yes sir.

4 Q. So you did speak with Meagan first?

5 A. Yes, sir.

6 Q. And she told you that Thomas had given her
7 massages, in fact at least four in the past?

8 MS. LEE: Objection. Hearsay.

9 THE COURT: Overruled. But it's -- there's
10 not anything impeachable here. It's what Ms. Marlborough
11 said when she testified.

12 MR. SANDO: Well --

13 THE COURT: She said four massages at her
14 home, one on her leg at her place of employment.

15 MR. SANDO: I'll move on to the important
16 part.

17 THE COURT: Okay.

18 BY MR. SANDO:

19 Q. These always take place in the early morning
20 hours like after midnight?

21 A. Yes, sir, that's what I was told.

22 Q. And she told you about some pills?

23 A. She showed me some pills, yes, sir.

24 Q. And she said that the massage that night, he was
25 rubbing her back?

1 MS. LEE: Objection. Improper impeachment.
2 Hearsay.

3 THE COURT: Sustained.

4 BY MR. SANDO:

5 Q. Did she tell you how she positioned herself?

6 A. She said she was laying on a mattress in her
7 brassiere, underwear and a towel over herself.

8 Q. No, how she positioned herself. How she was
9 positioned when she received the massage. Do you see
10 after a while?

11 A. How she was positioned is she was laying on a
12 mattress. He was rubbing her back.

13 Q. No, after a while he --

14 A. Okay. He was -- he gradually positioned himself
15 so that he was more reclined in terms of Ms. Marlborough.

16 Q. Okay. And then she told you that she had woken
17 up and --

18 MS. LEE: Objection. Improper impeachment.

19 BY MR. SANDO:

20 Q. Okay. Let me ask you another question. She told
21 you that she screamed?

22 A. Yes, sir.

23 Q. And this is an apartment complex?

24 A. Yes, sir.

25 Q. And were there apartments above and beside her?

1 A. Yes, sir.

2 Q. How big was that apartment? One bedroom or
3 smaller?

4 A. I don't really specifically recall. I mean it
5 was in the living room and kitchen. So one bedroom maybe.

6 Q. Did anyone interview the neighbors to see if they
7 heard a scream?

8 A. I don't know.

9 Q. You don't know?

10 A. I don't know if anyone did. I did not.

11 Q. As far as you know, nobody interviewed witnesses?
12 I mean any of the apartment dwellers in the area?

13 A. I didn't. I'm not aware of anybody doing that.

14 Q. And did you obtain some pills and underwear that
15 you put into evidence? Did you do that?

16 A. I placed some pills and some -- a pair of
17 underwear, yes.

18 Q. Did any other officers talk to her?

19 A. Talk to Ms. Marlborough?

20 Q. Yes.

21 A. I don't know. I spoke with her. She spoke with
22 the detective.

23 Q. Okay. But you didn't talk to Stephen, just
24 Meagan; right?

25 A. I may have spoken to Stephen in passing.

1 Q. But it's not in your report?

2 A. No, sir.

3 Q. Did she tell you that Thomas -- or someone else
4 said that Thomas jumped off the bed suddenly?

5 MS. LEE: Objection. Same objection.
6 Improper impeachment.

7 THE COURT: Sustained.

8 BY MR. SANDO:

9 Q. She told you that the pills had been spit out?

10 MS. LEE: Objection.

11 THE COURT: No, that's different from what
12 she testified to.

13 BY MR. SANDO:

14 Q. Did she tell you she spit the pills out?

15 A. Yes.

16 Q. And so you immediately called Poison Control?

17 A. I did call Poison Control.

18 Q. Why?

19 A. To determine what the pills were. That's a
20 service that they provide.

21 Q. Did you receive any information that they were
22 toxic or dangerous drugs?

23 A. The person at Poison Control I spoke with
24 couldn't identify them with the information I provided.

25 Q. How long were you there?

1 A. I don't know. Several hours. I don't have a
2 specific recollection of the time.

3 Q. And what did she tell you about what he touched?

4 A. What did Ms. Marlborough tell me about who
5 touched?

6 Q. Where she was touched.

7 A. She said that she woke up and there was a --
8 Mr. Yates had his thumb in her mouth -- his thumb. And
9 his other hand was down the front of her underwear. One
10 his fingers was touching her labia.

11 Q. And do you know -- did you make a note of that in
12 your report for probable DNA testing?

13 A. I made a note of it in my report.

14 Q. About -- that's about the underwear. How about
15 her pubic region or did you make a note of that too?

16 A. I'm confused by that question, sir.

17 Q. For DNA analysis. You've got the underwear for
18 DNA analysis?

19 A. I got the evidence and the underwear because the
20 detective told me get the underwear.

21 Q. Which detective?

22 A. Whichever detective responded.

23 Q. Deputy Aitchison?

24 A. Yeah, that sounds right, sir.

25 Q. And what about her body? Did anybody -- did

1 anybody ask -- was there any information, was there any
2 directives to take swabs of her pubic hair?

3 A. I don't know. I'm not qualified to do anything
4 like that. So if there was a direction given, that
5 wouldn't have been given to me.

6 Q. Well, you're trained in the police office --
7 officer. Especially in the last few years, DNA is a big
8 deal?

9 A. DNA is a big deal, yes, sir.

10 Q. And whenever you believe that there is DNA
11 present that might point to a suspect, normal police
12 procedure would be to collect that?

13 A. That may be the case. That would be, one, the
14 detective's decision. And two, I'm not trained -- undergo
15 specific training to do DNA collection in that manner.

16 Q. Right. I'm just talking about --

17 A. I'm not trained in that.

18 Q. -- your training. Do they tell you to collect
19 or do it -- ask a detective to collect DNA whenever there
20 may be DNA in any part of a body or anywhere if -- if it
21 might lead to further investigation?

22 MS. LEE: Objection, Your Honor. This
23 witness is not qualified to answer that question.

24 BY MR. SANDO: Well --

25 THE COURT: I think the question was have

1 you been trained to provide information to detectives so
2 that the detective can make a determination about whether
3 or not any DNA should be collected.

4 THE WITNESS: In that case I have only been
5 trained to provide as much information to responding
6 detectives as I can.

7 BY MR. SANDO:

8 Q. Did you talk to the responding detective that
9 night about DNA?

10 A. I don't recall a specific conversation about DNA.

11 BY MR. SANDO: That's all I have.

12 THE COURT: Anything, Deborah?

13 MS. LEE: Briefly, Your Honor.

14 CROSS-EXAMINATION

15 BY MS. LEE:

16 Q. Officer Frank, so your role in this case was
17 limited to responding to the call, taking a statement and
18 collecting the pills and underwear; correct?

19 A. Yes, ma'am.

20 Q. You didn't do any follow-up investigation?

21 A. No, ma'am.

22 Q. Because that's not your job?

23 A. Correct.

24 Q. And you did state that when you were speaking
25 with the victim, she disclosed to you that his hand was

1 down her underwear, underneath her underwear; correct?

2 A. Yes, ma'am.

3 MS. LEE: I don't have anything else.

4 THE COURT: Anything else, John?

5 MR. SANDO: No.

6 THE COURT: Jurors?

7 MR. SANDO: Oh -- no.

8 THE COURT: Jurors?

9 Nothing?

10 Okay. Thanks a lot, Mr. Frank, for being
11 here. You're excused.

12 All right. Deborah, back to you now.

13 MS. LEE: Thank you.

14 MS. TANHA: State calls James Hancox.

15 JAMES HANCOX

16 The witness, after being sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. TANHA:

19 Q. Hello, Officer Hancox.

20 A. Hi.

21 Q. How are you doing?

22 A. I'm well. Thank you.

23 Q. Could you please state your full name and spell
24 it for the record.

25 A. James Edward Hancox. J-a-m-e-s, H-a-n-c-o-x.

1 Q. What's your occupation?

2 A. I work at a gentlemen's club.

3 Q. And what do you do there?

4 A. My role?

5 Q. I'm sorry?

6 A. My role?

7 Q. Yes.

8 A. General manager.

9 Q. And is this club located in Tucson?

10 A. It is.

11 Q. How long have you worked there?

12 A. Since May of -- or correction, April of 2011.

13 Q. Were you working there on April 25th of 2011?

14 A. Yes, ma'am.

15 Q. And on that date did you receive a complaint from
16 one of the employees there about inappropriate behavior
17 from one of the customers?

18 A. Yes.

19 Q. Did you know the name of the customer? Do you
20 know who that was?

21 A. Mr. Thomas Yates.

22 Q. Do you see Mr. Yates in the courtroom today?

23 A. Yes.

24 Q. Would you please point to where he is and
25 describe an item of clothing that he's wearing.

1 A. The gentleman with the striped tie and the white
2 shirt and glasses.

3 MS. TANHA: Your Honor, may the record
4 reflect the witness has identified the defendant?

5 THE COURT: Yes.

6 BY MS. TANHA:

7 Q. And were you familiar with the defendant prior to
8 the complaint you received?

9 A. That is correct.

10 Q. How did you know him before then?

11 A. It had been rumored --

12 MR. SANDO: Objection to rumors.

13 THE COURT: Yes. Did he visit the club
14 frequently?

15 THE WITNESS: Yes. He was a regular
16 customer.

17 BY MS. TANHA:

18 Q. And do you know who wrote that complaint or who
19 complained about his behavior?

20 A. Yes, ma'am. Maria Estrella.

21 Q. And to your knowledge, had Maria filed a
22 complaint before?

23 A. No.

24 Q. And how long after the incident occurred did
25 Maria file the complaint?

1 A. It was almost immediately.

2 Q. And what was her -- Maria's demeanor like when
3 she came and made the complaint?

4 A. She was upset.

5 Q. And what was the complaint in reference to?

6 A. In reference to inappropriate conduct if you
7 will.

8 Q. Can you explain what she --

9 A. She complained that --

10 BY MR. SANDO: Objection. Hearsay. She's
11 here, Your Honor.

12 THE COURT: Sustained.

13 BY MS. TANHA:

14 Q. What did you do in response to Maria's complaint?

15 A. At that time I passed the information on to a
16 member of the management staff. Mr. Yates was asked to
17 leave our establishment for the evening. And it was later
18 determined that it would be permanently.

19 Q. And did a police officer come speak to you about
20 the incident?

21 A. Yes, ma'am.

22 Q. And do you feel you remember it enough to explain
23 what had happened that day once you spoke to that police
24 officer?

25 A. I had wrote a report internally as well as Maria

1 did. And we explained that information to him in addition
2 to giving that officer the report.

3 MS. TANHA: No further questions.

4 THE COURT: John.

5 CROSS-EXAMINATION

6 BY MR. SANDO:

7 Q. What are your job duties? You're the manager;
8 right?

9 A. Yes, sir, general manager.

10 Q. What are your job duties?

11 A. Oversight of the club. Financial, compliance,
12 safety.

13 Q. You work with many of the employees in there?

14 A. That is correct.

15 Q. And does it often happen that customers make
16 propositions to employees that are a little off color or
17 sexual in nature?

18 MS. LEE: Objection.

19 THE COURT: No, you have to, Marieh, because
20 it's your witness. So you have to make the objection.

21 MS. TANHA: Objection.

22 THE COURT: Overruled.

23 BY MR. SANDO:

24 Q. Do customers make propositions to employees in
25 your business?

1 A. How do you define employees?

2 THE COURT: Any of the women that work
3 there.

4 THE WITNESS: Yes, I would say it probably
5 happens on a once a month basis.

6 BY MR. SANDO:

7 Q. And are they sexual in nature?

8 A. There have been in the past, yes.

9 Q. And what do you do about that?

10 A. We ask guests to leave.

11 Q. And how long had Maria worked there?

12 A. She hadn't been there very long. I think she
13 started briefly -- right around the time that I did.

14 Q. Did there come a time she quit?

15 A. She has, yes.

16 Q. Do you know when?

17 A. No. No, I do not.

18 Q. Has she since gone back to employment at your --
19 at Venom?

20 A. She's actually technically been an employee, a
21 W-2 employee at one point with us as well.

22 Q. So for how long?

23 A. I believe that term was four or five months.

24 Q. What do you mean by a W-2 employee?

25 A. As an independent contractor, an entertainer at

1 our establishment, you're not a W-2 employee.

2 Q. Which means they don't get a salary?

3 A. There's no salary. They don't abide by a
4 schedule.

5 Q. How do they make their money?

6 A. Tips.

7 MS. LEE: Objection.

8 THE COURT: The answer can stand.

9 MR. SANDO: That's all I have.

10 THE COURT: Anything else, Marieh?

11 REDIRECT EXAMINATION

12 BY MS. TANHA:

13 Q. I just have one question. Is it common for
14 employees to make regular records of complaints or things
15 they find to be inappropriate?

16 A. If the degree in which they're making a complaint
17 requires follow-up of law enforcement, we'll certainly
18 have it documented.

19 Q. Okay. But only in those cases?

20 A. Yes, ma'am.

21 MS. TANHA: Thank you.

22 THE COURT: Jurors, any questions of
23 Mr. Hancox?

24 No?

25 Okay, sir, thanks for coming down. You're

1 excused.

2 THE WITNESS: Thank you.

3 MS. TANHA: State calls Maria Estrella.

4 MARIA ESTRELLA

5 The witness, after being sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. TANHA:

8 Q. Hi, Maria.

9 A. Hi.

10 Q. Is it okay if I call you Maria?

11 A. Uh-huh.

12 Q. Would you please state your full name and spell
13 it for the record.

14 A. Maria Elena Estrella. Maria, M-a-r-i-a. Elena,
15 E-l-e-n-a. Estrella, E-s-t-r-e-l-l-a.

16 THE COURT: Can you pull the mic closer to
17 you.

18 BY MS. TANHA:

19 Q. Maria, in April of 2011 did you work at a club
20 called Venom?

21 A. Yes.

22 Q. Is that club located in Tucson?

23 A. Yes.

24 Q. In April of 2011 do you remember filing a
25 complaint against a customer at Venom named Thomas Yates?

1 A. Yes.

2 Q. Do you see Mr. Yates in the courtroom today?

3 A. I do.

4 Q. Could you please point to him and describe an
5 item of clothing that he's wearing.

6 A. White shirt and glasses.

7 MS. TANHA: Your Honor, may the record
8 reflect the witness has identified the defendant?

9 THE COURT: Yes.

10 BY MS. TANHA:

11 Q. So when you were working at Venom, how often did
12 Mr. Yates come there?

13 A. He was a regular. He was there often. Three or
14 four times a week.

15 Q. So with Mr. Yates being a regular as you
16 mentioned, did most people who worked at the club
17 recognize him and know of him?

18 A. Yes, they did.

19 Q. Could you please tell us about what your
20 interaction was with Mr. Yates. What would you do?

21 A. We would just talk.

22 Q. What would you talk about?

23 A. Just -- I had another job at the time, and we
24 talked about that.

25 THE COURT: I'm sorry?

1 THE WITNESS: I had another job at the time,
2 so we talked about that.

3 BY MS. TANHA:

4 Q. Did Mr. Yates ever offer to do anything for you?

5 A. Massages.

6 Q. And how did that come subject come up?

7 A. Well, I would see him with the other girls. I
8 saw that he gave them massages. He offered it to me as
9 well. It just came up in conversation.

10 Q. Did Mr. Yates talk to you about whether he was a
11 professional masseuse?

12 A. He did say he had a license, that he was
13 professional.

14 Q. And you believed him?

15 A. I did.

16 Q. Did Mr. Yates ever talk to you about what -- who
17 he would give massages to?

18 A. Whoever wanted them.

19 Q. And did you accept his offer for massages?

20 A. Not outside of the workplace. But yes, I did
21 once.

22 Q. You mentioned that he massaged other female
23 employees?

24 A. Yes.

25 Q. And what would that look like?

1 A. They were just either sitting on him or laying on
2 him. It was just right there in the open in front of
3 everybody.

4 Q. Would Mr. Yates ever drink anything or eat?

5 A. No.

6 Q. So he only came in to --

7 A. Just to see a show.

8 Q. And offer the massages?

9 A. Yes.

10 Q. So I mentioned earlier about a complaint you
11 filed against Mr. Yates. Before filing that complaint,
12 did you feel comfortable around him?

13 A. Yes, I did.

14 Q. And so could you tell us what that complaint was
15 about.

16 A. He had offered me to make a lot of money doing
17 something that was out of the ordinary to me. He offered
18 to be my dominant.

19 Q. Did he ever explain what he meant by that?

20 A. He did when I asked him because I didn't know
21 what he was talking about.

22 Q. I know this is a little tough for you, but could
23 you explain how did he explain it to you? What did he say
24 to you?

25 A. He basically said that he would be able to do

1 whatever he wanted with me.

2 Q. And what did you take that to mean?

3 A. Well, I took it as sexually that's what he was
4 referring to.

5 Q. Before this proposition he made to you, had he
6 ever made a sexual comment or --

7 A. No.

8 Q. -- anything like that before?

9 A. No.

10 Q. Could you explain how he said it to you.
11 Describe that.

12 A. Well, he said, I have a proposition for you that
13 will help you make a lot of money.

14 Q. And what was his voice or his tone like?

15 A. Just normal.

16 Q. And what was your response?

17 A. I said I couldn't do that.

18 Q. And did he stop asking at that point?

19 A. No.

20 Q. So did he ask you again?

21 A. He did. I went to work, and he came up to me and
22 asked me again.

23 Q. And what was your response the second time?

24 A. I said, No, I can't do that. I'm sorry.

25 Q. And what was his demeanor when you rejected the

1 offer?

2 A. He kind of seemed like he shouldn't have asked me
3 that question. Like as if I was -- you know, I would say
4 something to someone. I think he --

5 MR. SANDO: Objection to what she thought
6 about what he was reacting to.

7 THE COURT: Sustained.

8 BY MS. TANHA:

9 Q. What did you observe about his demeanor?

10 A. He seemed agitated.

11 Q. And how did it make you feel when Mr. --

12 A. Uncomfortable.

13 Q. And at that point what did you do after this
14 happened?

15 A. Afterwards I went straight to the manager and
16 told him what happened.

17 Q. And how much time do you think was between the
18 incident and when you went to the manager?

19 A. About 20 minutes.

20 Q. And how did the manager react?

21 A. He seemed pretty pleased that I had came up and
22 told him something.

23 Q. Were there any actions taken against Mr. Yates?

24 A. I believe they kicked him out that day.

25 Q. Did you make a written record of the incident?

1 A. Yes, I did.

2 Q. And why did you do that?

3 A. He asked me to. And we have it on file if we do
4 that. I guess with a lot of complaints that they have
5 there, they have whoever writes their statement of what
6 happened.

7 Q. So just to recap -- and feel free to stop me if
8 I'm getting anything wrong because I don't want to confuse
9 anyone. So basically your interaction as you've testified
10 with Mr. Yates was that he was a regular at the club. You
11 would talk to him. Felt comfortable until the point of
12 him propositioning you in a way that you interpret as
13 being sexual. And at that point you complained?

14 A. Yes.

15 Q. And your complaint went to him being --

16 A. Yes.

17 Q. -- thrown out of the establishment?

18 Okay, last couple of questions for you. Do
19 you know Meagan Marlborough?

20 A. I don't.

21 Q. Are you friends with --

22 A. No, I've never heard of her.

23 Q. And you never talked to her?

24 A. No, never.

25 Q. A few more questions, Maria. So the day of the

1 incident before you filed your complaint, did you state
2 that Mr. Yates had offered you free massages?

3 A. Yes.

4 Q. And in your report did you mention something
5 about him wanting you to be his sub?

6 A. Yes.

7 Q. And what did you mean by that?

8 A. Well, I guess -- I mean I don't even know about
9 it. I guess there's a dominant and a submissive. The
10 dominant would be him. The submissive would be me. He
11 could do whatever he wants.

12 Q. And from what you understood that to mean, what
13 would a submissive do?

14 MR. SANDO: Objection, Your Honor. She said
15 she doesn't understand the term.

16 THE COURT: Well, no she answered whatever
17 he wants.

18 THE WITNESS: Whatever he wants.

19 BY MS. TANHA:

20 Q. Did you at one point use the word sex slave? Do
21 you mean -- is that what you --

22 A. I may have wrote that in the report that I wrote
23 three years ago. I may have wrote that in there.

24 Q. So from what you understood, he wanted you to be
25 a sex slave?

1 A. Correct.

2 Q. Did Mr. Yates ever offer you any pills?

3 A. He did. I don't recall what they were, but they
4 were pills.

5 Q. And did you accept them?

6 A. No.

7 MS. TANHA: No further questions.

8 THE COURT: Cross-examination?

9 The complaint that you filed was done the
10 day after the incident?

11 THE WITNESS: No, the day of.

12 CROSS-EXAMINATION

13 BY MR. SANDO:

14 Q. I'm going to show you what's been marked as
15 Defendant's Exhibit F. Does that look like a copy of a
16 letter that you send -- you gave --

17 A. Yes, it does.

18 Q. What does it say at the beginning?

19 A. Yesterday.

20 Q. Yesterday, April --

21 A. 23rd.

22 Q. So it did occur the day before?

23 A. It was three years ago. Could have been the day
24 of or the day after.

25 Q. Okay. And you said he offered you free massages,

1 but offered nothing in -- but not to pay for it.

2 Nothing -- he expected nothing in return?

3 A. Correct.

4 Q. Now, you worked at Venom from 2010 to 2013?

5 A. Correct.

6 Q. And then you quit and went to another job?

7 A. Correct.

8 Q. And then you went back to Venom a couple of
9 months ago?

10 A. Correct.

11 Q. So you've been there going on four years?

12 A. If you include the gap.

13 Q. And you said that Mr. Yates came in a couple of
14 times a week?

15 A. Yes, sir.

16 Q. But he wouldn't just come to see you; right?
17 He'd come to see the other girls too?

18 A. Yes.

19 Q. And he never got a dance, did he?

20 A. No.

21 Q. He just wanted to sit and chat?

22 A. Correct.

23 Q. This happened in 2011?

24 A. Uh-huh.

25 Q. In April of 2011, so just about exactly three

1 years ago?

2 A. Correct.

3 Q. Did you say that, But he would come in -- I would
4 say about five times to see me before I got --

5 A. No.

6 Q. He came in three or four times a week?

7 A. Correct.

8 Q. And it was always in the morning?

9 A. Always in the morning.

10 Q. Like around 11:00?

11 A. Yes.

12 Q. Business starts picking up when night falls;
13 right?

14 A. It does.

15 Q. You work in the daytime?

16 A. I do.

17 Q. And if he'd come in, what would you do?

18 MS. TANHA: Objection.

19 THE COURT: Yeah. It's a little broad.

20 BY MR. SANDO:

21 Q. Okay. He'd come up -- would he come up and say
22 hi to you?

23 A. He would.

24 Q. And would you come up and say hi to him?

25 A. I would.

1 *Q.* And you'd sit down with him?

2 *A.* Yes.

3 *Q.* And chitchat?

4 *A.* Uh-huh.

5 *Q.* About what?

6 *A.* Just whatever, anything. Nothing specific.

7 *Q.* Did you in an interview say that he never got
8 dances. He just talked?

9 *A.* Just talked.

10 *Q.* And this included the other girls in the
11 building; right?

12 *A.* Yes. That I saw.

13 *Q.* Did they ever get massages?

14 *A.* Yes, they did.

15 *Q.* How often?

16 *A.* I don't know. I can't tell you.

17 *Q.* How would these massages take place?

18 *A.* Well, with me it only occurred one time. He had
19 offered a massage. I don't know. He said, I don't need
20 anything in return. I'll give it to you for free.

21 *Q.* Okay. Well, what I mean is would he kind of sit
22 on your lap?

23 *A.* Oh, no.

24 *Q.* And you'd lean back and rub his back --

25 *A.* No.

1 *Q.* -- and he'd rub your back?

2 *A.* We would sit on his lap, yes, and he'd rub our
3 back.

4 *Q.* And how long would that take place?

5 *A.* It just depends on the massage, how long he
6 wanted to.

7 *Q.* So he'd massage the other girls right out in the
8 public, right in front of everybody?

9 *A.* Yes.

10 *Q.* The manager didn't say anything about that?

11 *A.* No.

12 *Q.* How often did he do that?

13 *A.* Probably every time he came in.

14 *Q.* And would the massage last longer than a half
15 hour?

16 *A.* No.

17 *Q.* Were they all the same where they would sit on
18 his lap and lean backyards?

19 *A.* Yes.

20 *Q.* And did they think it was therapeutic?

21 *A.* Yes.

22 *Q.* And the other girls, they talked to him all the
23 time; right?

24 *A.* They did.

25 *Q.* But there was never any tips? He never tipped?

1 A. No.

2 Q. If you're not getting tipped, you're not making
3 money?

4 A. Correct.

5 MS. TANHA: Objection.

6 THE COURT: She already answered.

7 BY MR. SANDO:

8 Q. Did anybody resent that that you know of?

9 A. Not that I know of.

10 Q. You know, they're just wasting their time or was
11 it just for the massages?

12 A. I have no idea.

13 Q. And when he came in, he never drank anything?

14 A. No.

15 Q. Not even water?

16 A. No.

17 Q. And you said you didn't really know what dominant
18 means. But that's what he offered you?

19 A. Yes.

20 Q. And this was one time when you were in there, he
21 asked, What if I pay you if you let me be your dominant?

22 A. Not in those words, but yeah, something like
23 that.

24 Q. And you said like, No, I don't do that?

25 A. Yes.

1 Q. And then after that you went to the manager?

2 A. Yes.

3 Q. Did he ever say how much he's going to pay you?

4 A. No.

5 Q. Did he ever describe what a dominant was?

6 A. He kind of did when I asked him to explain what
7 he meant.

8 Q. In your report you just say a sub.

9 A. Sub.

10 Q. Yes. And that's all he said; right?

11 A. Well, he would be dominant and I'd be the
12 submissive I think. I don't --

13 Q. You don't really know?

14 A. No.

15 Q. Did he ever show any sexual interest in you or
16 anybody else in the club?

17 A. No.

18 Q. And there's a rule in the club no touching;
19 right?

20 A. No touching.

21 Q. So somebody that touches one of the girls, they
22 get booted out?

23 A. They get warned.

24 Q. Pardon?

25 A. They get warned.

1 Q. And then they get thrown out?

2 A. Yes.

3 Q. But he touched these dancers -- he touched the
4 other girls and you. How did he get around that rule?

5 A. I have no idea.

6 Q. Now, it's not infrequently to be propositioned
7 where you work, is it? It's not unusual?

8 MS. TANHA: Objection. Irrelevant.

9 THE COURT: Sustained. Let's rephrase it,
10 John.

11 BY MR. SANDO:

12 Q. Some of the people that go to the club make
13 improper comments and remarks to you and the other girls?

14 A. Yes.

15 Q. And there's a lot of drinking at those clubs too;
16 right?

17 A. Yeah, there is.

18 Q. So it's not really far out of the ordinary for a
19 customer to make something -- make a rude comment being
20 where they are?

21 A. I guess. The state of mind they're in, is that
22 what you mean?

23 Q. Yeah. Have you ever been propositioned for
24 sexual services?

25 A. I have.

1 Q. How many times?

2 A. I'd say about three.

3 Q. What happened?

4 A. I'd say no.

5 Q. Now, you noticed when he came in, that he walked
6 with a cane?

7 A. Yes.

8 Q. And he had trouble walking --

9 A. Yes.

10 Q. -- because of some injury. Is that right?

11 A. I didn't know of an injury. I never asked.

12 Q. Do you remember being asked, Did he have some
13 kind of -- some injury or something like that?

14 Yeah.

15 A. I'm sorry?

16 Q. Do you remember being asked, Okay. He had some
17 kind of injury, and you said, Yeah?

18 A. No.

19 THE COURT: Did you assume that his walking
20 with a cane may have been a result of an injury?

21 THE WITNESS: I assumed. I never asked.

22 BY MR. SANDO:

23 Q. So right away they kicked him out?

24 A. Yes.

25 Q. But you liked him before that?

1 | A. I did.

2 | Q. And you said he was a good masseuse?

3	A. Yes.
---	---------

4 Q. When he touched the other dancers massaging, they
5 allowed him to do that?

6	A. Yes.
---	---------

7 | *Q.* Even in front of everyone?

8 | *A.* Uh-huh.

9 *O.* And it was for free?

10	A. Yes.
----	---------

11 Q. And these massages as far as you were concerned
12 were therapeutic?

13	<i>A.</i> Yes.
----	----------------

14 Q. And when they do this, they would lay back on
15 him?

16	<i>A.</i> Yes.
----	----------------

17 Q. While he's sitting in their lap. So he would rub
18 the shoulders and the head?

19	A. Yes.
----	---------

20 | Q. But never the private areas?

21	<i>A.</i>	No.
----	-----------	-----

22 THE COURT: I'm trying to picture this. So
23 you, yourself, so you sat on his lap facing away from him?

24 THE WITNESS: Facing away.

25 THE COURT: And then you just leaned back

1 and he rubbed your shoulders?

2 THE WITNESS: Yes.

3 THE COURT: Okay. I get it.

4 THE WITNESS: There would be other times to
5 get to the whole back area when you'd switch your position
6 and you'd be on your knees with your face towards his
7 chest and lean forward on your knees and put your face --
8 do you know what I mean?

9 THE COURT: Yes. Okay.

10 BY MR. SANDO:

11 Q. And how many of the other girls did this for a
12 therapeutic reference on a regular basis?

13 A. That I noticed probably like three that I
14 noticed.

15 Q. And they never paid for it?

16 A. Not that I know of.

17 Q. At that time you didn't think he was a bad
18 person?

19 A. No.

20 Q. And as far as the money, he didn't say how much.
21 He just said, I'll pay you?

22 A. Yes.

23 Q. This complaint you filed, that wasn't a legal
24 complaint with the police department, was it?

25 A. I don't think so.

1 Q. Because no legal -- illegal action occurred?

2 A. No.

3 Q. And you were asked to do it by the manager?

4 A. Yes.

5 BY MR. SANDO: That's all I have.

6 THE COURT: Redirect?

7 MS. TANHA: Yes, Your Honor.

8 REDIRECT EXAMINATION

9 BY MS. TANHA:

10 Q. So just to clarify about the complaint because
11 there seems to be some confusion, so did you complain to
12 the staff working and to the manager the day the incident
13 happened?

14 A. I -- no, I complained the day of I guess as of
15 the date I -- the -- I wrote the day after.

16 Q. So you complained right away --

17 A. Yes, I did.

18 Q. -- but you wrote the report the day after?

19 A. Yes.

20 Q. Was that --

21 A. Yes.

22 Q. And just in your mind, do you have any doubt as
23 to what happened that date? Do you remember it?

24 A. I do. Bits and pieces I do. I mean I don't
25 remember exact dates because it's a long time ago, but I

1 do remember what happened.

2 Q. And we were talking earlier about positions. You
3 were asked about the different positions. Did he ask you
4 to sit on his lap for a massage?

5 A. No.

6 Q. And what part of your body did he rub?

7 A. My back, my head and shoulders.

8 Q. And these positions that the girls were in to get
9 the massages, were they based on his directions for
10 massages?

11 A. I would say more preference.

12 Q. Depending on where they wanted to --

13 A. Yes.

14 Q. So depending on where they needed the rub --

15 A. Yes.

16 Q. -- did he tell them where then to --

17 A. Yes.

18 Q. -- position themselves?

19 A. Uh-huh.

20 Q. Okay. And going back to the complaint real
21 quick. How many times did you actually file a written
22 complaint against a customer?

23 A. Once.

24 Q. And that was Mr. Yates?

25 A. Yes.

1 Q. And did you consider this more than just a rude
2 comment?

3 A. What he had offered?

4 Q. Yes, or what he propositioned.

5 A. No.

6 Q. Did you consider that a rude comment or something
7 more worse than that?

8 A. It was something more worse than that.

9 Q. And going back to the comments, the dominant and
10 submissive, the words, terms used, are those terms that he
11 used?

12 A. Yes.

13 Q. And you had asked him to explain --

14 A. Yes.

15 Q. -- what those terms meant? And what did he say
16 to explain what those terms meant?

17 A. Basically like I've been saying. I would do
18 whatever he wanted me to do. And I took it as sexual.
19 And I basically summed it all down and said sex slave
20 because that's what it is.

21 Q. And you were asked if you liked him before this
22 incident.

23 A. Yes.

24 Q. And when you say "like," do you mean that in a
25 sexual or romantic way?

1 A. No.

2 Q. Do you mean as --

3 A. As a person.

4 Q. And you also mentioned that he rubbed other
5 female employees that worked there. It was out in the
6 public as you mentioned?

7 A. Uh-huh.

8 Q. And he had --

9 THE COURT REPORTER: I'm sorry. I didn't
10 hear your question.

11 MS. TANHA: Sorry.

12 BY MS. TANHA:

13 Q. So it was -- he didn't rub any of the girls'
14 private areas; correct?

15 A. No.

16 Q. And were these girls awake when he rubbed them?

17 A. Yes.

18 MS. TANHA: Thank you.

19 THE COURT: Jurors, any questions of Ms.
20 Estrella?

21 Did you ever file any complaints or tell the
22 management about those other couple or three times that
23 people had propositioned you?

24 THE WITNESS: No, I didn't because they
25 didn't continue.

1 THE COURT: Because what?

2 THE WITNESS: They didn't continue
3 afterwards.

4 THE COURT: So it was that one time you said
5 no and then they shut up?

6 THE WITNESS: They shut up.

7 THE COURT: Okay. Anything else?

8 All right. May Ms. Estrella be excused?

9 MR. SANDO: That's fine, Your Honor.

10 THE COURT: All right. Anything else for
11 today?

12 MS. LEE: No, Your Honor.

13 THE COURT: Okay. Does the State rest now?
14 I can't remember if you said you had another witness.

15 MS. LEE: Yes.

16 THE COURT: Subject to any exhibits?

17 MS. LEE: Yes.

18 THE COURT: Okay. So the State has rested,
19 which means that they've presented all of the evidence
20 that -- the evidence that they intend to in their
21 case-in-chief.

22 So this been a little usual because
23 Mr. Sando called a couple witnesses for the defense out of
24 order. So you know that there have been defense
25 witnesses. There may be more tomorrow morning. I don't

1 know for sure right now, but I think there will be.

2 So in any case, I will see you tomorrow
3 morning at 9:00. Okay? And remember the admonition.
4 Again, don't do any homework. Again, be safe going home.

5 And I'll see you all tomorrow morning at
6 9:00. We'll finish up the case tomorrow.

7 (The jury exited the courtroom.)

8 THE COURT: Show the absence of the jury.

9 John, do you want to do a Rule 20 now or
10 submit it or what?

11 MR. SANDO: Yes, Your Honor. Based upon the
12 inconsistent statements of the witness, the lack of DNA,
13 the lack of any other witnesses, the problems with the
14 position itself, the -- it doesn't make sense and it seems
15 physically impossible to have been in that position, I
16 don't believe there's substantial evidence to go forward.

17 THE COURT: The Court finds that there's
18 substantial evidence to warrant a conviction. That a
19 rational trier of fact could find the essential elements
20 of a crime proved beyond a reasonable doubt. The Rule 20
21 is denied.

22 Can we go over the instructions now real
23 quick, and then Deanna can have them prepared for tomorrow
24 if we can settle them now.

25 MS. LEE: Yes, Your Honor. Before we do

1 that, though, I didn't mark the --

2 THE COURT: You want that marked?

3 MS. LEE: Yes, please.

4 THE COURT: Jake, that'll be State's what,
5 the diagram?

6 THE CLERK: 12.

7 THE COURT: All right. Do you have any
8 objection that be admitted, John?

9 MR. SANDO: No.

10 THE COURT: State's 12 is admitted.

11 (Exhibit 12 admitted.)

12 THE COURT: John -- Jake will take care of
13 it. John knows how I do this. So the way I do
14 instructions is I'm just going to go through them,
15 identify each one. And if you got a problem with it,
16 yell. Otherwise you don't have to say anything.

17 I'm now going to tell you the rules you
18 should follow.

19 Find the facts from the evidence.

20 Opening statements and closing arguments.

21 There weren't any stipulations; right?

22 MR. SANDO: No.

23 MS. LEE: No.

24 THE COURT: I'll take that out.

25 Direct and circumstantial.

1 Believability of witnesses.

2 Police officers no better or worse.

3 Expert opinion.

4 Statements of the defendant.

5 Mr. Yates, you don't have to tell me right
6 now. You can tell me tomorrow. But if you decide not to
7 testify, I'm going to give the instruction defendant need
8 not testify. If you decide you're going to testify, then
9 I'll give an instruction that says the defendant is a
10 competent witness. If you know now, you can tell me, but
11 if you want to wait until tomorrow, that's fine too.

12 MR. SANDO: He's not going to testify.

13 THE COURT: All right. So let me ask you,
14 Mr. Yates, do you understand that you have the right to
15 testify in your trial? And you can consider the advice of
16 counsel, but ultimately it's your decision whether or not
17 to testify. Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Have you decided that you do not
20 want to testify?

21 THE DEFENDANT: Yes.

22 THE COURT: Okay. Thank you.

23 MR. SANDO: For the record, Your Honor, the
24 main reason for this is given his case workers at CODAC
25 and his case management for the other one, they said it

1 would be almost impossible for him to testify.

2 THE COURT: Well, whatever the reason, he's
3 decided not to. All right.

4 Neither side is required to call all
5 witnesses.

6 The State has charged Mr. Yates, but he's
7 pled not guilty.

8 Sexual abuse defined. Sexual contact
9 defined in the same instruction. Without consent is
10 defined.

11 It is a defense to prosecution for sexual
12 abuse if the defendant was not motivated by sexual
13 interest.

14 Intentionally. Knowingly.

15 The reasonable doubt *Portillo* instruction.

16 John, you believe that that unfairly shifts
17 the burden of proof and violates your client's
18 constitutional rights?

19 MR. SANDO: Yes.

20 THE COURT: Okay. Over your objection I'll
21 give the *Portillo* instruction.

22 The verdict must represent the considered
23 judgment of each juror and all eight must agree.

24 Is there something else that I missed?

25 MR. SANDO: No.

1 MS. LEE: I don't believe so.

2 THE COURT: Okay. All right, then we're
3 good.

4 All right. I'll see you both tomorrow
5 morning at 9:00.

6 Deborah, the wheels are turning. What were
7 you thinking?

8 MS. LEE: Oh, no. I'm good for 9:00.

9 THE COURT: Okay. All right. I'll see you
10 at 9:00, Mr. Yates, tomorrow morning at 9:00.

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12 (Court in recess.)

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CERTIFICATE

I, Nichole Forrest, CSR, RMR, CRR, CR #50862
certify that as an Official Court Reporter in the Superior
Court of Pima County, Arizona, I was at the hearing of the
foregoing entitled case; that while there I took down in
stenotype all the oral testimony adduced and/or
proceedings; I have transcribed such stenotype into
typewriting; and that the foregoing typewritten matter
contains a full, true and correct transcript of my
stenotype notes so taken by me as aforesaid, to the best
of my skill and ability.

/s/NICHOLE FORREST

Nichole Forrest, CSR, RMR, CRR, CR #50862
Official Court Reporter